BLANK PAGE

375

United States Circuit Court of Appeals

For the Third Circuit

No. 7398

STENTOR ELECTRIC MANUFACTURING COMPANY, INC.,
Plaintiff-Appellee

vs.

KLAXON COMPANY,
Defendant-Appellant

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

APPELLEE'S APPENDIX

PAUL LEAHY
SOUTHERLAND, BERL, POTTER & LEAHY
Delaware Trust Building
Wilmington, Delaware
Counsel for Appellee

Of Counsel:
MURRAY C. BERNAYS
ABRAHAM FRIEDMAN
Of the New York Bar

[The figures on the right indicate the pages on the official Record and the Supplementary Record, respectively. The latter are identified herein by the letters "S.M."]

BLANK PAGE

INDEX

TESTIMONY

Plaintiff's Witnesses

PAGE

Buell Hollister:
- Direct 1
- Cross 18
- Redirect 23

Joseph J. Graf:
- Direct 26
- Cross 32

Charles R. Carroll (deposition):
- Direct 34

Walter L. Eckhardt:
- Direct 43

Jesse Lee Spence (deposition):
- Direct 53
- Cross 59
- Redirect 68

Foust H. Childers (deposition):
- Direct 71

Henry George Leach:
- Direct 78
- Cross 96
- Redirect 100, 109
- Recross 105

R. M. Critchfield (deposition):
- Direct 111

F. C. Kroeger (deposition):
- Direct 115

PAGE

Barry W. Cooper (deposition):
Direct 121

L. O. Parker (deposition):
Direct 124

DEFENDANT'S WITNESSES

Paul M. Farmer:
Direct 128
Cross 130

Vladimir Karapetoff:
Redirect 162

Leo A. Kelley:
Direct 163

PLAINTIFF'S EXHIBITS

P-12 178
P-13 178
P-14 178
P-15 178
P-17 179
P-18 179
P-32 182
P-33 195
P-35 196
P-37 198
P-39 201
P-40 201
P-43 202
P-45 203
P-46 206

PAGE

P-47 207
P-48 208
P-49 209
P-62 210
P-64 211
P-65 212
P-66 213
P-67 216
P-68 218
P-71 219
P-76 220
P-80 223
P-89 224
P-90 227
P-91 228
P-95 229
P-98 230
P-100 231
P-101 241
P-106 242
P-107 244
P-109 245
P-123 247
P-124 250
P-125 253
P-126 255
P-127 256
P-132 257
P-133 258
P-147 259
P-148 260
P-148A 261

BLANK PAGE

Testimony

—199—

* * * * * * *

BUELL HOLLISTER was called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Direct examination by Mr. Bernays:

* * * * * * *

—203—

Q. What was the capitalization of the company, Mr. Hollister? A. 1,000 shares of $10 par value, total $10,000.

* * * * * * *

—207—

* * * * * * *

Q. For convenience, Mr. Hollister, I shall most generally, I think, refer to the company as "Stentor" from now and I call your attention to that so that you may have it in mind that I have in mind the one company under whichever name. Would you be good enough to tell us, please, what was the business of Stentor during the period from its organization in May of 1913, until May 20, 1918? A. Manufacturing electrical equipment based on a loud-speaking receiver and a transmitter under the Spence-Stentor

—208—

patents.

* * * * * * *

—212—

* * * * * * *

Q. Are you familiar with what were the activities and what was the business of Stentor during the period from May, 1913 to May, 1918? A. It is a long time ago, but I think I can give you most of them.

Q. Will you tell us, please, whether Stentor was developing any products in the field about which I have heretofore been inquiring during that period? A. Yes.

Q. Did those products have anything to do with the use of the loud-speaking receiver or the loud-speaking transmitter, patents with respect to which were put in evidence this morning? A. Yes. All the applications

—213—

used the Stentor loud-speaking receiver and practically all cases the loud-speaking transmitter.

Q. Will you state, please, what were some of the applications of those two products during the period from May, 1913 to May, 1918, which were made by the Stentor Company? A. They were all loud-speaking systems. One would be the loud-speaking system for railroads by which they would dispatch their trains. There were announcers used in the railroad stations; there were paging systems, which corresponds to the modern use of loud speakers in restaurants and things like that. They were used for loud speakers on Naval United States boats for observation purposes and also on commercial vessels. There were automobile loud-speaking telephones. There were office and other intercommunicating systems. There were telephones used for Army tanks; Naval gunfire control loud-speaking systems; apartment house telephones; aeroplane telephones. I suppose there are some others which I do not recall at the moment.

Q. Those are all that you can think of at the moment?

—214—

A. Yes.

Q. Keeping in mind as nearly as you can these various applications that you have recited, will you be good enough to tell us, please, which of them, if any, were being commercially manufactured and sold by the Stentor Company during the period from May, 1913, to May, 1918? A. The

train dispatching system—the loud speakers, those were, of course, and all this is loud speakers——

Q. Will you keep your voice up. There seems to be some competition. A. There were automobile loud-speaking telephones; they were used on United States Naval ships during the War for observation purposes and that was to guard against submarines. They also used them on Naval vessels for the purpose of giving orders about the directing and firing of the guns on those vessels. There were aeroplane telephones. There were office inter-communicating telephones.

Q. What about paging systems, which was one of the applications that you mentioned in an earlier answer?

—215—

A. Yes, we had paging systems in hospitals and factories so that you could call out the name of a doctor if he is wanted or a special man.

Q. What about the apartment house telephone? Was there any commercial application and sale of that? A. It was perfected and we placed it in one apartment experimentally, but the War came on at that time and whether there were any commercial sales I am not sure. I think there may have been one, but I am not positive.

Q. During the time about which I am inquiring from May, 1913 to May, 1918, did the capitalization of the company remain as it was originally at the figure of $10,000 that you have mentioned, or was it changed either up or down? A. The capitalization remained unchanged, but as the commercial demand of the war business increased, of course, we had to borrow additional money.

Q. I am coming to that, but so far as your capitalization was concerned that remained unchanged? A. That did not change.

Q. Did the company during this period of time have

—216—

any problem in respect of working capital or working funds? A. Yes, it did.

Q. Will you tell us what it was in your own way? A. We found the commercial uses expanded so rapidly from our experimental work that we had to employ considerable more capital and, as I said I think a moment ago, especially when the large amount of Navy and commercial vessel business came on to us.

Q. And for that purpose you say you borrowed funds? A. Yes, we borrowed additional funds.

Q. And used that as working capital? A. Yes.

Q. Will you tell us, please, what if anything occurred with respect to the business of the Stentor Company at or within some little time after the United States entered into the World War in 1917? A. As I remember, our facilities were pretty limited owing to our small capital with the result that the Government insisted that we use our entire facilities as much as possible for the Government work.

Q. Did you get Government contracts for your product?

—217—

A. Yes.

Q. Beginning in what year did that occur? A. In 1917, I think; yes, it was 1917.

Q. And what generally was the nature of those contracts? For what use of the product did the Government buy the product is what I have in mind, Mr. Hollister? A. For observation purposes on the ships and also, as I explained, for directions for firing and aiming of the guns.

Q. Were any of the products sold for installation on United States Army transports? A. Yes.

Q. United States Naval vessels? A. Yes.

Q. How long did that business continue beginning with whenever it started in 1917, Mr. Hollister? A. As far as the Stentor Company is concerned?

Q. Yes, as far as the Stentor Company is concerned. A. In the first part, I should think, of 1917, and then we turned over the business to the Klaxon Company on May 20, 1918, and we turned over at that same time a large amount of Government contracts also.

—218—

Q. And during the period from 1917 to May 20, 1918, did Stentor continue to receive and fill Government contracts of the kind that you have described? A. Yes.

• • • • • • •

—230—

• • • • • • •

Q. At the time when the agreement, Plaintiff's Exhibit 9, between Stentor and Klaxon was signed, Mr. Hollister, can you tell us what of the Stentor products were actually being manufactured and sold, having in mind the period from 1917, when the Government orders began coming in, until May 20, 1918, when the agreement was made?

The Court: What is the question now? What were the devices sold at the time of the agreement, May 20, 1918?

Mr. Bernays: Yes.

The Court: Very good.

A. Observation loud-speaking systems for use on various Government Naval vessels, commercial Naval vessels, auto-

—231—

mobile telephones, and we would fill an occasional order for some of the other uses, but we never went out to get them. I don't know exactly what those other ones would be, but that comprised about all of them. Oh, yes, a few aeroplane telephones were being made, I believe.

Q. And that would be all you could say at this time that were being manufactured? A. That were being manufactured and sold.

• • • • • • •

—243—

Q. Article Second of this agreement, Mr. Hollister, provides in the portion which is relevant for my present purposes, as follows:

> "The Stentor Company agrees that this license will remain in full force and effect, if not sooner cancelled or terminated as herein provided, for the term of seventeen (17) years from September 29, 1914."

Was this license cancelled or terminated at any time prior to the end of 17 years from September 29, 1914? A. No.

Q. The end of 17 years from September 29, 1914, would be September 29, 1931? A. Yes.

—244—

Q. And the license was not canceled or terminated during that period? A. No.

Q. Did the Stentor Company within two years of that last date, that is to say, within two years of September 29, 1931, at any time itself engage in the manufacture of the apparatus which is described and mentioned in the license? A. No.

—245—

Q. Do you remember whether the Stentor Company continued to receive reports with respect to sales and profits under this agreement up to September 29, 1931? A. Yes.

Q. It did continue to receive them? A. Yes.

Q. Article Seventh of this agreement provides:

> "The Stentor Company further agrees that it will indemnify and save harmless the Klaxon Company against all loss, damage and expenses accruing to it by virtue of any suit for infringement or

alleged infringement of any of the patents mentioned in schedule A or growing out of the manufacture and sale by it, or its sub-licensees, of articles covered thereby,"

Was the Stentor Company at any time called upon by the Klaxon Company to indemnify it and save it harmless under that provision of the agreement? A. No.

Q. This Article 7 further provides that the Stentor Company will "appear in and defend any and all suits at law or in equity, which may be brought against the

Klaxon Company its vendees, licensees and sub-licensees by reason of the manufacture, sale or use by them, or any of them, of said articles or apparatus embodying said inventions, or any of them."

Was the Stentor Company at any time from May 20, 1918 to September 29, 1931, called upon by Klaxon Company to appear in or defend any suit at all as described in this paragraph of the agreement? A. No.

Q. There is a proviso at the end of the paragraph which says:

"Provided, however, that prompt notice of pendency of said actions or suits shall be given by the Klaxon Company to the Stentor Company by registered mail."

Did the Stentor Company ever receive notice of the pendency of any such action or suit from the Klaxon Company? A. No.

Q. Did the Stentor Company at any time receive notice from the Klaxon Company that any suit or proceeding had been instituted or was pending which questioned the validity of the patents which are mentioned in the agree-

—247—

ment? A. No.

Q. Article Ten of the Agreement, Mr. Hollister, is the one which provides that the Klaxon Company shall pay to or on account of the Stentor Company as the purchase price of the assets which are transferred by the agreement, an amount as appraised by Coats & Burchard of Chicago, and as audited by Haskins & Sells of New York. Was payment of a purchase price made by the Klaxon Company to the Stentor Company? A. Yes.

Q. Have you tried, at our request, and in connection with this trial, to ascertain from your figures and records what that purchase price was as paid to the Stentor Company? A. From the statements, it appears to be $130,000. That might have been adjusted up a little bit, $200 or $300 up or down, but a definite payment of $130,000 was made.

Q. And that is as nearly as you can tell at this time, the purchase price? A. Yes.

—248—

Q. Do you happen to remember whether there were adjustments made up or down, or is this a matter which is not very clear in your recollection? A. I believe there was a slight adjustment made for some receivables or payables, and it was about $1,000 or somewhere around that, but it is not quite definite in my mind.

Q. Article 17 is the article of this agreement which provides that in the event that either the loud-speaking receiver patent or the transmitter patent is declared invalid or substantially limited in scope by the decree by any Court of competent jurisdiction, then Klaxon Company shall have the right, upon 30 days' written notice by registered mail to the Stentor Company, to cancel this contract, and any rights herein granted. Did the Stentor Company at any time receive from the Klaxon Company,

notice that either of those patents has been declared invalid? A. No.

Q. Or substantially limited in scope by the decree by any Court of competent jurisdiction? A. No.

—249—

Q. Did the Stentor Company at any time receive from the Klaxon Company notice that the Klaxon Company was electing to cancel the agreement by reason of a declaration of invalidity or substantial limitation in the scope of the patents by decree of any Court of competent jurisdiction? A. No.

* * * * * * *

—250—

* * * * * * *

Q. To finish up with Article 17, Mr. Hollister, there is a provision that the Klaxon Company may cancel the agreement upon notice to the Stentor Company when by reason of obsolescence of the articles covered by said patents, a net profit of 15 per cent. can not be secured by the Klaxon Company. Did the Stentor Company ever receive notice from the Klaxon Company of cancellation of the agreement by reason of the obsolescence of the articles covered by the patents or by reason of the fact that a net profit of 15 per cent. can not be secured by the Klaxon Company? A. No.

* * * * * * *

—254—

* * * * * * *

Q. Mr. Hollister, the figure appears at page 2 of Plaintiff's Exhibit No. 19, as follows:

"Gross sales less returns and allowances, $96,107.50."

Do you know whether that refers to gross sales less returns and allowances of the Stentor Company for the year 1918 or any part thereof? A. Yes, part thereof.

Q. Which part? A. From January 1, 1918 to May 20, 1918.

—255—

Q. And the figure under that, "Less cost of goods sold, exclusive of expenses, repairs and other items called for separately, $80,324.24," is that a figure for the same part of the year 1918? A. Yes.

Q. From January 1 to May 20? A. Yes.

Q. The resultant being the difference between those two figures in the amount of $15,783.26 representing what, and for what period? A. That represents the net income for that same period, January 1, 1918 to May 20, 1918.

Q. Upon the operations—— A. Operations of the Stentor Company before the contract.

Q. That is, upon the sales and cost of sales as it appears here? A. Yes.

Q. The next figure which appears here, "Gross income from operations other than trading or manufacturing, less allowances, $27,815.13," what does that represent? A. That was the income we received from May 20, 1918

—256—

to December 31, 1918 from the Klaxon Company.

Q. Under the agreement in suit? A. Under the agreement in suit, yes, sir.

Q. Then would it be correct to say that the total of the $15,000 odd figure and the $27,000 odd figure, which is set forth here, $43,598.39 as gross income from all sources except dividends is the gross income for the entire year 1918 of the Stentor Company, comprising the two sources that you have described? A. Yes.

—257—

Q. And is the figure which appears here, net income for taxable year, $13,077.13, the amount of income returned as taxable by Stentor Company for the year? A. Yes, it is.

Buell Hollister—for Plaintiff—Direct

Q. What deduction is made from the figure of $43,000 which I mentioned awhile ago, in arriving at the taxable income of $13,000 odd? A. Deductions: Ordinary and necessary expenses (except amounts reported in item 2 above or called for separately below and not including cost or value of capital assets or miscellaneous investments sold during the taxable year) $7,275.00.

Compensation of officers, $18,750.

Interest except on indebtedness incurred or continued to purchase or carry obligations or securities other than obligations of the United States issued after September 24, 1917, the interest on which is wholly exempt from income tax, $4,496.26.

Q. Aggregating deductions of $30,521.26? A. Yes.

Q. Are you able to tell us from looking at this writing, what was the amount of tax originally reported as payable

under this return as income and excess profits tax for the year 1918? A. The total tax as reported originally was $3,778.43.

Q. Do these papers show whether there was thereafter any claim made for reduction of taxes, and if so, will you state what reduction was asked, and what was procured? I will withdraw that question. I have misread the document. I asked you in a question which I have withdrawn about reduction of taxes. Did any modification in the amount of tax payable for the year 1918 occur by reason of which the Stentor Company was required to pay the United States Government for the year 1918, either more or less than the figure of $3,778 that you mentioned? A. Yes, they increased the tax of $3,778.43 by assessing an additional $2,851.19.

Q. And was the total of those two amounts paid by the Stentor Company to the United States Government as its taxes for the year 1918? A. Yes.

• • • • • • •

—263—

Q. Looking at the first page of Plaintiff's Exhibit No. 20, which is the return for 1917, can you tell me, please, what was the amount of gross sales and other income from operations reported on that return for the year 1917? A. The figure is slightly covered. It is 50,000, it looks like 895.07. 50,000 is quite clear and the first numeral following is not clear, and then 95.07. That is

—264—

above 50,000.

Q. What was the total net income—— A. I can get it. Excuse me.

Q. —which is returned upon this return for the year 1917? A. $13,210.13.

Q. And what is the total tax assessable for the year, according to this return? A. $6,099.94.

Q. The certification refers to both an original and an amended return. Can you tell me whether these figures that you have just given are from the original or amended return? A. Original.

Q. What are those figures upon the amended return? Will you find them, please, and give them to us, that is to say, corresponding figures? A. $13,685.33.

Q. Just for identification of figures, first, what is the gross sales and other income from operations figure on that amended return? A. The gross sales appear to be the same figure, $50,895.07.

—265—

Q. And what is the figure of total net income upon the amended return? A. $13,685.33.

Q. What is the total tax assessable figure upon the amended return? A. $3,737.16.

Q. Can you tell from the amended return what abatement of tax there was as made by the Government upon the amended return? A. $2,094.77.

Q. Was that the abatement made from the figure of $6,099.94? A. Yes.

Q. First returned? A. Yes.

Q. Do you know, and if you do, will you please state what the ground of abatement or reduction was in the amount that you have stated? A. It was in the excess profits tax. We were borrowing considerable money at that time, the Stentor Company was.

* * * * * * *

—267—

* * * * * * *

Q. Mr. Hollister, do you know Mr. Alfred P. Sloan, Jr.? A. I have met him.

Q. Is that the gentleman who is now, I think, the Chairman of the Board of General Motors Corporation? A. Yes.

Q. Do you remember approximately when you first met Mr. Sloan? A. Some time before the signing of the contract. The exact date I do not know.

Q. Might it have been as early as the latter part of

—268—

1917, or have you no recollection that would enable you to say? A. The record, as far as I have looked over it, and as far as my remembrance goes, does not state at all when I saw him, except I do remember one time definitely that I did meet him, at least once.

Q. You mean you met him face to face? A. Yes.

Q. And spoke to him? A. The correspondence refers to conversations. Now, I don't remember at this date whether those were personal conversations or conversations over the telephone.

Q. Whatever conversation or conversations you had with Mr. Sloan, you say those were before the making of the agreement in suit? A. Yes.

Q. Did they have to do with the making of the agreement in suit? A. Yes.

. . . . . .

—269—

. . . . . .

Q. Will you state to whatever extent you can remember, after this passage of time, approximately when or within what period it was that you either met Mr. Sloan or had a conversation with him otherwise than by personally meeting him? A. In reading over the correspondence now, I either met or talked with him before the early spring of 1918. I corresponded with him somewhere around March or April, and that is the correspondence that I have seen that I can place any more accurately than what you have asked me.

. . . . . .

—308—

. . . . . .

Q. And have you ascertained from your records what tax was paid to the United States Government for the year 1918, as far as the records disclose? A. Yes.

Q. Was there in that year an additional assessment by the United States Government over and above the amount originally reported? A. Yes.

Q. Will you give us the figure of the tax originally paid, the amount of the assessment which was added by the United States Government and the total of those two figures? A. Tax paid, $3,778.43; assessment by the Government, a total of $2,851.19, which being added together makes a total tax for 1918 of $6,629.62.

. . . . . .

—313—

. . . . . .

Q. Mr. Hollister, you have heard my reading of Plaintiff's Exhibit No. 33 to the jury, I take it? A. Yes.

Q. I direct your attention to the statement in that exhibit, "Just prior to Mr. Hollister's departure the writer" meaning Mr. Charles R. Carroll, "called upon him and informed him fully of the attitude of the corporation with regard to the Stentor contract." Do you remember having had a conversation with Mr. Carroll at some time prior to August 29, 1924, which is the date of this exhibit? A. Yes.

Q. Do you remember approximately when that conversation was had? A. I went abroad on the 18th, I believe, of August.

—314—

Q. Of that year? A. Of that year.

Q. So it was prior to the 18th of August? A. Yes.

Q. Did Mr. Carroll call upon you at your office? A. Yes.

Q. Will you state, please, what Mr. Carroll said to you and what you said to him, in substance, of course, and as closely as you can remember it after this passage of years? A. Mr. Carroll took the position that the Klaxon Company——

Q. May I stop you a moment so we do not have any trouble. You are not permitted to tell what position he took or how he felt or anything of that sort. You have to limit yourself to a reproduction, as nearly as your memory will allow, what was said by both sides of the conversation. Will you try to do that? A. Yes. As well as I can remember, Mr. Carroll told me at that time that the Klaxon Company were not interested in the Stentor business. anything except the automobile telephone. He said, in fact, that they would like to have me buy the

—315—

contract from them. They wanted me to pay money for taking over the contract which we had made with them. I told him that there was a tremendous market in radio

loud speaking business and also plain ear-phones, and he told me they were not interested in embarking in any fields outside of the automobile telephone. That is as near as I remember was the conversation.

Q. Did you say anything to Mr. Carroll with respect to his suggestion that somebody should buy out the contract from Klaxon? A. I told him that I saw no reason why I or the Stentor group should buy them out, they were liable under the contract, and I told him that they should perform under it.

• • • • • • •

—320—

• • • • • • •

Q. Is that as closely as you can fix the conversation in all respects except as to their contents, any conversation that you had with Mr. Carroll in 1923? A. Yes.

Q. I come back to my question of a moment ago which is that you tell us what you remember of what was said in any of these conversations in 1923 having to do with the agreement in suit? A. I was trying to get the money they owed us, paid to us.

—321—

Q. Did they owe you money at that time? A. Yes, they did from the earnings of the company, and I was also trying to get him to settle the points which we had at that time in controversy about the allocation of overhead. They were charging, we felt, the overhead to Stentor, which rightfully belonged to Klaxon, and the main reason for taking over the contract was that they would reduce the overhead, and instead of that,—and Mr. Sloan told me at my meeting with him that they would reduce our overhead and enlarge our selling organization—and instead of that they increased our overhead very, very much.

• • • • • • •

—324—

• • • • • • •

Q. Mr. Hollister, you have heard my reading of Plaintiff's Exhibit No. 35 to the Jury, I take it? A. Yes.

Q. You have observed the opening statement in the first full paragraph of the second page, which is: "In answer to your inquiry by telephone the other day, we do not feel that we are obligated to take on the development work

—325—

necessary to apply these patents to radio equipment or some other field outside our own line, and we are not disposed to do so from business reasons."

Did you at some short time before the date of this letter have a telephone conversation with Mr. Carroll? A. Yes, I did.

Q. Will you state, please, as nearly as you can remember it, what was said in that conversation by you, and what was said by him, and may I caution you again, Mr. Hollister, do not tell us what you were trying to do or anything, but tell us what was said in talk? A. Of course, I do not remember the exact words. I remember the gist perfectly. I told Mr. Carroll that Mr. Sloan had come to me a few days before——

Q. Do you mean Mr. Spence? A. Mr. Spence had come to me a few days before. He seemed very much upset because Mr. Carroll had not called him up as he said he would after the visit Mr. Spence paid to him.

—326—

Mr. Carroll was to let me know whether they would be interested in a very large contract which Mr. Spence told me——

Mr. Morris: I do not think I should like to have any hearsay except as it was embodied in his conversation with Mr. Carroll.

The Witness: Yes.

By Mr. Bernays:

Q. Did you follow that instruction? A. I will do my best.

Q. Will you try to? A. Yes. I told Mr. Carroll Mr. Spence had come to me in great distress. I told Mr. Carroll that Mr. Spence had stated to me that he had told him that he could get a very large contract for loud speakers for use in radio from the Music Master Corporation, of Philadelphia.

I told Mr. Carroll that the two demonstrations which Mr. Spence had made, one in New York before Mr. Smith, of W. A. Harriman & Company—they are bankers in New York—and the second before Mr. Eckart—he was the president of the Music Master Corporation, which was the

—327—

largest and most successful maker of loud speaking radio receivers at that time—proved that the Stentor was not only as good as the best but better because the demonstrations proved to those two gentlemen that it was better, and I told Mr. Carroll that I thought they should immediately get after Mr. Eckart, to get after this business, because Mr. Eckart, I told Mr. Carroll, was planning to let contracts for about 800,000 receiver units—he had just let a contract for 300,000—and I told Mr. Carroll that here was the business handed to him on a platter, and he ought to go into the radio business, a business that was becoming then and it has become now very, very large, indeed.

Mr. Carroll said he would let me know.

• • • • • • •

—328—

• • • • • • •

Cross examination by Mr. Morris:

• • • • • • •

—372—

XQ. Mr. Hollister, Schedule B to the contract of May

the 20th, 1918, gives a list of contracts, does it not (handing papers)? A. Yes, sir.

XQ. Will you tell me what the first contract listed in that schedule is, what the number of it is? A. It says "U. S. Contract No. 34, 145."

XQ. I beg pardon? A. "U. S. Contract No. 34,145."

• • • • • • • • •

—379—

XQ. How long did you have to make the deliveries under the contract? A. From memory, of course, I have no idea, unless the contract says something about it.

XQ. Will you refer to the contract and tell me the length of time within which you had to make the deliveries? A. It says here first delivery of 40 within 30 days after date of contract, to be continued at the rate of 30 sets every 10 days thereafter, and complete delivery within 120 days. We were way behind our orders, and I should doubt very much whether that specification was lived up to. Practically none of this War business with us was up to date, owing to our very small facilities, and that is why the Government asked us to give up our regular business because we were so far behind in our work.

• • • • • • • •

—380—

• • • • • • • •

XQ. I thought you testified that all of the assets of Stentor were taken over by Klaxon under this agreement? A. Not all the assets. We retained the patents which we did not capitalize at all.

• • • • • • • •

—399—

• • • • • • • •

XQ. Mr. Hollister, if I understand you aright, you were saying not only that the Klaxon Company should have

made more profits than it did, so I am asking you how much more profit it should have made than it did?

Mr. Bernays: I object to that question, sir, as one which is manifestly impossible for any witness to answer. How can any witness say how much profit would have been made, as a figure, in response to such a question as that?

Mr. Morris: And I agree with counsel, and my first defense raises the question.

Mr. Bernays: Do I understand that Judge Morris is stating that he asked the witness a question which he had it in mind would be objected to properly when it was put.

The Court: No. The question was asked and answered: "Shouldn't Klaxon have made more profit?" and the answer was "Yes."

—400—

The Witness: I did not answer that "Yes" then.

The Court: Not just then, but half an hour or more ago.

Mr. Morris: But I would like to bring to your Honor's mind precisely what I have got in mind and I do not mind the witness knowing it, but before doing that, I would like to answer the inquiry from the learned counsel of the other side.

The nature of this suit made demand upon me that I ask that question. Whether that question is a proper question depends upon whether the damages which the suit in this case is asking from the defendant are not so speculative that it is not properly an issue for a court or jury.

I submit that learned counsel's statement shows that the damages which he is asking in this case are so speculative that there can be no basis for

them. Even if there were a basis in fact, there can be no basis in law.

Passing to the question of the basis for the question that I am asking this witness, may we

—401—

read together Article Eleventh of the contract.

The Court : Are we arguing the case?

Mr. Morris: No, sir.

Mr. Bernays: I was only objecting to a question, sir.

Mr. Morris: I wonder if I could get your Honor to read this Article Eleventh because unless you do I cannot make my question clear, Article Eleventh.

I think there was a question pending, and I am asking for the answer of this witness to this question so long as the question or so long as this suit is pending, but I am stating that I shall contend at the end of this case and at all times during this case that no damages can, under the law, be awarded by Court or jury to this plaintiff, regardless of other facts in the case, because, as my learned friend suggests, in other words, they are so speculative that the question cannot be answered without speculation.

Mr. Bernays: In order that there may be no subsequent misunderstanding from any silence on

—402—

my part with respect to that last remark, may I note upon the record, if Judge Morris will forgive me for interrupting him, that I made no such a statement a no such suggestion and no such concession.

The Court: What is the question to the witness?

Mr. Morris: May we have the question, Mr. Smart?

(Last question repeated as recorded.)

Mr. Bernays: I object to that question as incompetent, irrelevant and immaterial.

Mr. Morris: And I press for a favorable ruling upon it for the reason that unless this witness can answer that, surely it is not a question to be submitted to the jury.

Mr. Bernays: The one does not follow from the other at all.

The Court: Proceed with the argument.

Mr. Morris: The basis for my question——

The Court: I have your side. What is the reply?

Mr. Bernays: I am submitting, sir, that the amount of damages is something which will have to be determined by the jury from the facts and the

—403—

figures which will be set before it in the proof, that the question is one for determination by the jury, and that it is asking the witness for a conclusion on his part which goes into the province of precisely what the jury is here to try.

The Court: They try upon the evidence produced?

Mr. Bernays: Yes, sir.

The Court: And the question asked is: How much profit should the defendant Klaxon have made?

Mr. Bernays: Yes, sir.

The Court: Do you care to venture an answer to that question?

The Witness: I personally cannot measure because it seems to me so large. That is the difficulty.

• • • • • • •

—408—

Redirect examination by Mr. Bernays:

• • • • • • •

RDQ. Mr. Hollister, you were asked some questions about contracts on hand and to be performed at the time of the making of the agreement in suit, May 20, 1918. I ask you to look at the writing which I show you, and more particularly to direct your attention to the last paragraph thereof, and to see whether that in any wise informs you or refreshes your recollection as to the amount of such contracts at the beginning of April 1918? A. This is dated April 8, 1918.

RDQ. Does it in any wise inform you or refresh your recollection as to the amount of such contracts on hand, unperformed at that time? A. Yes, sir.

RDQ. And what is that amount? A. $205,000 for Navy type ship telephones.

RDQ. And does it in any wise inform you or bring back to your mind, orders on hand at about that time for automobile equipment? A. Yes, sir.

—409—

RDQ. And what was the amount of orders unfilled for automobile equipment at that time? A. $2,500.

RDQ. You were also asked about profit or rate of profit upon these marine telephone installations, which were the subject of these Government contracts. Will you look at that same writing that you hold before you, and turn to the second page thereof, and see whether the contents of the writing in any wise inform you or refresh your recollection as to the relationship between cost of manufacture, exclusive of overhead, and sales price of the Naval type of telephone installation of Stentor, and if you need, please use a pencil and paper and make any computations that you may desire.

• • • • • • •

A. Yes, sir.

RDQ. Will you state, please, what that relationship is?

—410—

A. Do you want the percentages?

RDQ. You said something about three or four times cost of manufacture. What I want you to give me is how many times, if any, cost of manufacture, exclusive of overhead, was of the selling price of the Naval type of set?

A. The Naval type of set was over four times.

RDQ. Which was over four times, the selling price?

A. The selling price was over four times as much as the cost, not including overhead.

RDQ. Now, as to the commercial type of marine telephone, how many times, if any, was the selling price over the cost of manufacture not including overhead at that time? A. Commercial type was over five times.

XQ. Which was over five times? A. The selling price was over five times the cost to commercial companies.

RDQ. Commercial installations, you mean? A. Yes.

RDQ. Commercial products? A. It says commercial station instruments.

—411—

RDQ. And that was exclusive of overhead, however?

A. Yes, sir.

RDQ. At that time, how many times, if any, was the sales price of the automobile equipment over the cost of manufacture, exclusive of overhead? A. The wholesale price of $15 and the cost was under $5.00, or three times, but we sold them retail at $25, and so it is over five times.

* * * * * * *

—412—

* * * * * * *

RDQ. You were asked on your cross examination, Mr. Hollister, as to profits of Klaxon, if any, upon the Government [illegible] turned over to it. I show you a writ-

ing, and ask you to look upon it, and see whether it informs you, or refreshes your recollection as to the

—413—

amount of sales of Klaxon in the period May 20, 1918 to December 31, 1918, and the amount of profits made by Klaxon upon its business in Stentor products, during those months of 1918?

• • • • • • •

—414—

• • • • • • •

A. Yes, it does refresh my recollection.

• • • • • • •

—415—

• • • • • • •

RDQ. Will you give us the figures, Mr. Hollister. A. Net sales of Stentor products, 1918, as adjusted by Haskins & Sells, $163,515.12. Total cost of manufacture, $102,085.12. This shows a profit of $61,430.

RDQ. You have said Mr. Hollister, in your answer that the figures were as adjusted by Haskins & Sells? A. Yes, sir.

RDQ. What were the figures which were reported to you by Klaxon for that same period before they had been adjusted by Haskins & Sells? A. The net sales were the same. The cost of manufacture, however, was $108,669.58, or $6,500 more than as adjusted.

RDQ. What was the profit as originally reported to you by Klaxon before Haskins & Sells made that adjustment?

—416—

A. $54,845.54.

RDQ. And after the adjustment what was it? A. $61,430.

• • • • • • •

—488—

RXQ. Then your position is and your testimony is, as I understand it, that one who knew his business, who was engaged in that business at that time, could have made a profitable business? A. From the investigation I have made, yes.

—272—

JOSEPH J. GRAF, was called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Direct examination by Mr. Bernays:

—273—

Q. Will you explain, please, as briefly as may be, what is that function of railroad operation which is comprised in the expression "Train Dispatching"? A. The movement of trains on a railroad is controlled by an individual whose title is Train Dispatcher. He directs all the movements of trains, and it is his duty to get them over the road as promptly as possible. Very frequently, of course, it is necessary for one train which is traveling on a faster schedule than another, to pass the slower train. He makes the arrangement for the passing by, at that time, telegraph. He also keeps a record of the consist of trains, cars, destinations, where cars must be set up and cars picked up on his particular division.

Q. Beginning in about 1907, was there a change made in the system of train dispatching on the D. L. & W., Mr. Graf? A. Yes, we began in 1907 to substitute the voice or the telephone for the method of communication between

—274—

the dispatcher and the agents and operators along the line.

Q. Was that change of method or system something which was within the scope of your personal duties at that time? A. Yes, sir.

Q. Are there any advantages in respect of train dispatching in the use of the method of communication by voice as against the method of communication by telegram? A. Oh, yes.

Q. Will you state what they are, please? A. The work is handled more expeditiously by voice than it was by telegraph. For instance, by telegraph it was necessary to spell every word, letter by letter, that was in an order in a message to a train. With the telephone, of course, the words were pronounced as words, and the station names and train numbers were spelled out in order that there could be no mistake.

The other feature was that when there was any difficulty with the train, the dispatcher and the superintendent, and if necessary the master mechanic, was able to com-

—275—

municate direct with the engineer and conductor and get a better picture of the actual difficulty than he formerly was able to when it was repeated by way of an operator.

Then in connection with the telephone there was a development of a selector. Formerly, with the telegraph, the stations were called by certain combination of letters. If the agent or operator was working at anything around the building or in the adjacent freight house, sometimes it was absolutely impossible to reach that station because he did not hear the call, but with the selector associated with the new telephone system, he was able to ring a bell individually at the station or tower, that he wanted to communicate with, and keep on ringing until he got a

reply. The operator and the agent knew that the dispatcher heard the bell ring. There was an answer back signal to him, and he knew that the bell was ringing and so there was no excuse for not answering the bell as there formerly was with the telegraph.

Q. Mr. Graf, up to about sometime in 1913, what type of telephone receiver was being used in the telephonic method of train dispatching on the D. L. & W. that you

—276—

have described? A. An ordinary telephone receiver with a head band as was being used at the time, and still is by telephone operators at a regular telephone exchange.

Q. Were those loud-speaking receivers? A. No, sir. He clamped them right to his ear.

Q. Were you at that time a member of any organization of telephone and telegraph executives of railroads, Mr. Graf? A. Yes, sir. The Telephone & Telegraph Superintendents' Association.

Q. And did that comprise as membership, representatives from railroads in the United States other than the D., L. & W.? A. All railroads, and the railroads of Canada and Mexico.

Q. And did you gentlemen meet in your Association and discuss with each other problems of railroad administration and management that came within the scope of your interest? A. We did.

Q. Are you able to tell us whether at any time during

—277—

the period between 1907 and 1913, there was a demand in your particular field of work, about which you are telling us for loud-speaking telephonic systems? A. Yes, it was generally appreciated that the clamped receiver was very annoying to the dispatchers. It conveyed a feeling of confinement. A dispatcher's duties are rather large, and he has got to refer continuously to records, to his train

sheet, to his train order book, to check up on the movement of trains and the speed the trains are making, and whether they had reached certain points to meet and interchange with another railroad, and he has got to confer continuously with the Chief Dispatcher and the Superintendent and other officials, relative to his work, and they always complained about the irritation of this receiver. Many of them complained of headaches, and it was very annoying.

Q. Do you know a man named J. L. Spence, Mr. Graf? A. Yes, sir.

Q. In what year did you meet him? A. 1913.

Q. Do you remember in what connection you met Mr. Spence? A. My superior officer, Mr. L. B. Foley, who at that time was superintendent of Telegraph and Telephone, said that Mr. Spence had a——

Mr. Morris: No. I think we should not have any hearsay.

—278—

The Court: Will you caution the witness?

Q. Mr. Graff, under the rules of evidence, you may mention to me the fact that it was Mr. Foley who referred you to Mr. Spence, for example, but you can not tell us what somebody else said to you about Mr. Spence, because that is hearsay, and inadmissible, and so will you try and watch that, and if I find you transgressing the rule, I will call your attention to it, and you will understand that that is not a discourtesy. A. All right.

—279—

Q. Where did you meet Mr. Spence, Mr. Graf? A. At his headquarters and combination office and shop on William Street, in New York City.

Q. In New York City? A. Yes.

Q. Was anybody else present at the time of that meeting? A. Mr. Percy Pine.

Q. Anybody else that you can remember? A. Mr. Spence.

Q. Just you three? A. That is all.

Q. Will you tell us what occurred at the time of that meeting? A. I was taken in one room and there was a horn suspended from the side of the wall, and it was described to me as a telephone. Then a voice came through the horn and I recognized the voice of Mr. Percy Pine, although he was not in the room. He was in another room either on the same floor or the floor below, I don't know, but the voice came through very clearly. I walked around different parts of the room and did not have any

—280—

difficulty understanding what was being said.

Q. Do you remember at all about how large the room was? A. Why, I think this particular room was probably 20 by 14.

Q. Did the voice, as you heard it, come out with or without distortion? A. Without.

Q. And you say it was audible in each part of the room? A. In all parts of the room.

Q. Did anybody else send his voice over the system while you were listening to the reproduction of the voice at the receiver end? A. No. After carrying on not a very lengthy conversation, I went to another room, in which there was a transmitter, by myself, and spoke into it, repeating car numbers, names of stations and other words which might be confused, and they repeated them back in the same manner that I transmitted them.

Q. Is there in train dispatching any problem of accuracy or clarity of communication which has to do with

—281—

the operation of the road? A. Very much so.

Q. Would you speak up. We are getting some competition from outside. A. The confusion of car numbers and car initials may cause considerable delay in movement

of trains, in setting off the wrong car, or if they give a certain car number and it is improperly received, the conductor looks through his consist and cannot find it, and he has got to stop and communicate with the superintendent's office and explain to him that he has not got this particular car.

Then there is another feature of issuing orders for trains to pass. For instance, on our Buffalo Division we have three towns about 30 miles apart, the name of one is Conona, the other is Avoca and the other is Savona, so I think you can realize the necessity of getting good pronunciation through the receivers in connection with moving trains and passing them at points like that.

Q. Did you on this occasion of your visit to Mr. Spence and Mr. Pine test out the system that you have just

—282—

described? A. Yes.

Q. Did you find that the communication was satisfactory or unsatisfactory? A. I thought it was very satisfactory.

Q. On the occasion that you were there, Mr. Graf, did you look at all at the mechanism of the receiver that was being demonstrated to you? A. Yes. We opened the container of the receiver and I seen the nature of the construction.

• • • • • • •

—285—

• • • • • • •

Q. You have said, Mr. Graf, that on the occasion in 1913 when you met with Mr. Spence and Mr. Pine, one of the receiver mechanisms was taken apart? A. Yes, sir.

Q. Did you observe how the diaphragm in that mechanism was supported? A. It was supported—we referred to it as a floating diaphragm because there was a rubber tube on both sides of the diaphragm to which the entire

diaphragm was supported, between which the diaphragm was supported.

Q. Did you thereafter—and this is one of those questions as to which under the rules of evidence you will

—286—

please confine yourself to a "Yes" or "No" answer, Mr. Graf—did you thereafter report upon these experiments that you have told us about to your superior officers? A. I did.

• • • • • • •

—291—

Cross examination by Mr. Morris:

• • • • • • •

—292—

• • • • • • •

XQ. What was the horn on this thing for, Mr. Graf, and I hand you Plaintiff's Exhibit No. 22?

Mr. Bernays: If your Honor please, I object to that question as not being proper cross examination, and asking a witness to testify on technical matters, and in the capacity of an expert, upon which matters, and in which capacity, he was not examined on the direct.

The Court: Objection overruled.

Mr. Bernays: Exception.

The Court: Let an exception be entered.

A. The purpose of the horn was to give the voice emanating from the receiver a directional effect. At the Railroad Dispatcher's office there is always a great deal of exterior noises, trains, and at Hoboken it was the ferries and whistles of ferries and tug boats, and so forth, and it was necessary to give the noise coming from the receiver

a directional effect to the ear of the man operating the circuit. That is still being done.

—293—

XQ. By giving it directional effect, it enabled the listener to hear better? A. Yes.

XQ. But it was necessary to have the horn on this system in order to enable the person listening, to hear? A. Only because of the other noises in the room and surrounding the building in which his office is located.

XQ. And the bracket to which the horn was attached was upon his desk, affixed to his desk? A. Yes, but it was flexible so that he could move it around as he moved around in his work.

XQ. And have the horn directed to him? A. Yes, sir.

XQ. You installed this in 1913? A. Yes, sir.

XQ. You began the installation in 1913? A. In the fall of 1913, and I think we started in August or the first part of September.

XQ. What experience had you had in examining the in'ards of a telephone receiver prior to your examination of a receiver which was exhibited to you by Mr. Spence

—294—

and Mr. Pine in New York City, in 1913? A. What experience did I have with that particular receiver?

XQ. Any receivers? A. I had lots of experience with ordinary telephone receivers because I had been in the work for a period of six or seven years, and I had charge of various Bell Company installations in different parts of New Jersey.

XQ. What held the diaphragm in the receiver which you examined in the presence of Mr. Spence and Mr. Pine? A. Two rubber tubes.

XQ. What held the rubber tubes in? A. Compression.

XQ. Compression by what? A. The two elements screwing together and effecting a resilient compression on the rubber tubes. The tubes themselves were held in place by grooves in the assembly.

XQ. But what came in contact with the tubes on the side? A. Rubber tubes.

XQ. Another rubber tube? A. One on each side of the diaphragm.

—295—

XQ. On the other side of the rubber tube on each side of the diaphragm, what was there? A. On one side was the holder for the horn that you see there, and that was the cap of the assembly, and on the reader that supported the magnet which actuated the oscillations of the diaphragm itself.

XQ. Was there anything to press upon the rubber tube beside the diaphragm? A. The pressure was by the housing itself.

XQ. That is the lateral or side pressure or the outside pressure? A. The outside and the inside pressure.

XQ. You mean that there was a shoulder or an abutment on the inside of the housing which pressed against the rubber ring? A. No, there was a groove on the inside of the housing in which you fitted the rubber tube. Then you laid the diaphragm on the rubber tube and you had another depression or groove in the other end of the housing and you finally screwed them together.

* * * * * * *

—515—

* * * * * * *

DEPOSITION OF

"CHARLES R. CARROLL, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Bernays:

"Q. Mr. Carroll, what is your employment or office in

General Motors Corporation? A. I am counsel for overseas operations, which is a division of General Motors

—516—

Corporation.

"Q. How long have you been connected with General Motors Corporation? A. Since January 1, 1922 in the direct service of the corporation.

• • • • • • •

—517—

• • • • • • •

"Q. When you entered that office on January 1, 1922, it was in the general employ of General Motors Corporation as one of the lawyers on the staff of its general counsel? A. Yes.

"Q. And you continued to be so employed for all the time since then? A. Until about four years ago."

• • • • • • •

—519—

• • • • • • •

"Q. Sometime in 1921 Mr. John T. Smith, who was then and still is general counsel for General Motors Corporation, delegated to you the handling of matters affecting the Stentor and the relationship between Stentor and Klaxon, did he not? A. No. It couldn't have been before the early part of 1922, but at that time he did.

• • • • • • •

—525—

• • • • • • •

"Q. Now, in addition to this naval equipment to which you have referred, is it not a fact that the only other product manufactured and sold by the Klaxon Company in this Stentor operation at any time during the term of this agreement, has been what we have been referring to here as the Autophone? A. That is my understanding.

• • • • • • •

—528—

• • • • • • •

"Q. Then is this a fair statement of the situation, Mr. Carroll, and if not, please correct it so that it will be in your judgment a fair statement: That when the contract in suit was entered into there were war contracts for the delivery and installation of the Stentor equipment upon United States naval vessels, which thereafter and some time prior to early in the year 1922 ran out; that while these United States contracts were still in force and effect the Stentor operation also included the manufacture and sale of the Autophone; that after the war contracts ran out the Stentor operations for the balance of the term of the agreement consisted of the manufacture and sale of the Autophone and of no other products. My question is, whether that is a fair statement. A. It may be, but it is not my statement.

"Q. If we are at a difference with each other on the word 'fair', I will change it and ask whether or not that is a factually accurate statement. A. Please repeat the

—529—

question.

(Previous question repeated by the stenographer.)

"Q. The question now is, is that a factually accurate statement? A. Substantially, yes.

"Q. If you are willing to accept that statement as only substantially accurate, will you be kind enough to state upon the record what is comprised in the qualification. I want to get it as nearly right on the record as I can. A. Prior to 1922 the volume of business was an aggregate in part of war business and in part the Autophone business. I do not know the proportions. After 1922, I am quite certain of my recollection that there was substantially no marine equipment.

"Q. And only Autophone? A. And either substantially or entirely Autophone business, that is my recollection."

• • • • • • •

—530—

"Q. Have you ever met Mr. J. L. Spence? A. I have.

"Q. When did you first meet Mr. Spence, as near as you can remember? A. I would have to refresh my recollection on that.

"Q. Have you anything here with you, or have you anything in your office, from which you could refresh your recollection? A. It was in 1925 about May or June of 1925.

"Q. Are you quite clear that it was not before that time? A. It might have been.

"Q. I put these questions to you because I want to inquire whether you have any record or any recollection of a conversation with Mr. Spence in 1924 in which Mr. Spence told you that he had interested the Music Master Company in using Stentor devices in connection with radio. Does that bring back anything to your mind? A. I have no recollection of such a conversation in 1924.

"Q. Do you have a recollection of such a conversation

—531—

in any other year? A. I have a recollection of Mr. Spence claiming that the device used as a transmitter in the Stentor equipment was of substantial interest in the radio field, but I do not recall his ever having mentioned any particular purchaser in that field as being interested in it. My recollection is to the contrary, that he did not mention who was interested. The radio receiver has a speaker, which is a transmitter.

"Q. When you referred in your last answer to the Stentor transmitter in connection with radio, were you referring to a claim of feasibility of use for the Stentor

apparatus in connection with radio loud-speaking devices, and if not, what was your reference intended to be? A. As I recall the discussion, it was not with a so-called loud-speaking unit, but rather speakers of limited capacity, such as at that time were used on head-phones.

"Q. And you think that that conversation occurred in 1925 rather than 1924? A. That would be my recollection.

"Q. You are not altogether certain of it? A. No.

• • • • • • •

—533—

• • • • • • •

"Q. When Mr. Spence spoke to you at whatever the date was about this possible application of the Stentor device, or devices under the Stentor patents to radio, did you personally know as to whether those devices, or devices under those patents, would or would not be feasible for application to radio? A. I had no reason to believe that they were in any degree superior to devices currently being produced in the radio industry. Mr. Spence claimed that they were.

• • • • • • •

—547—

• • • • • • •

"Q. Are you clear then that when you wrote in this letter of April 28, 1925 that Klaxon or Remy which then had the Stentor operation, 'was not willing to go with it into the field of radio equipment,' you were communicating a determination which had been made by somebody in General Motors having jurisdiction and authority to make that determination? A. I do not think that is what the letter says. Any decision communicated in the letter was

—548—

certainly the result of discussions with responsible executives.

"Q. Of General Motors? A. Of General Motors Cor--

poration or the Klaxon division—I do not mean Klaxon division but the Klaxon Company, which was a part for operating purposes of Remy.

"Q. Now you say in this letter, Mr. Carroll:

> "'In answer to your inquiry by telephone the other day, we do not feel that we are obligated to take on the development work necessary to apply this patent to radio equipment, or some other field, outside of our own line.'

When you use the word 'our' in this statement whose line are you referring to? A. The automotive line.

"Q. The line of General Motors Corporation? A. Generally.

"Q. And when you say 'our own line' what line are you referring to? A. The automotive industry.

—549—

• • • • • • •

—559—

• • • • • • •

"Q. In this letter, Plaintiff's Exhibit 33, you state that just prior you called upon Mr. Hollister, 'and informed him fully of the attitude of the corporation with regard to the Stentor contract.' Do you remember that conver-

—560—

sation with Mr. Hollister? A. I remember the substance of it.

• • • • • • •

"Q. Now, Mr. Carroll, my request was that you state the substance of the conversation, and not that you state what you were making an effort to do; so will you be good enough to tell us what was the substance of your conversation with Mr. Hollister to which you refer in Plaintiff's Exhibit 33. A. I can only recall it in very general terms; I did tell Mr. Hollister that the volume of business pres-

ent or potential under the Stentor patents did not justify the interest and attention of the corporation and its executives in Klaxon, and that we would be very much interested in having him, Hollister, or Spence buy us out of the contract on any fair basis. That was the occasion of

—561—

my visit.

"Q. And what basis did you suggest upon which Mr. Hollister or Mr. Spence or Stentor should buy you out? A. I do not recall that we got down to figures on that.

"Q. You are quite clear, however, that your proposal to Mr. Hollister in this conversation to which you are referring in Plaintiff's Exhibit 33, was a proposal that Mr. Hollister or Spence or Stentor should buy you out? A. Yes.

• • • • • • •

—566—

• • • • • • •

"Q. We have it then that in August, 1924, you proposed to Mr. Hollister that either he or Mr. Spence or Stentor should buy you out on this Stentor agreement; right? A. That was the approach.

"Q. And in April, 1925, as appears from the letter of April 28, 1925 from you to Mr. Hollister, that suggestion is made, is it not? A. It is.

"Q. Will you turn now please to Plaintiff's Exhibit 36, being letter of June 29, 1925 from Mr. Hollister to you. Your office reference mark on that letter shows that that was referred to you, does it not? A. Yes, sir.

• • • • • • •

—568—

• • • • • • •

"Q. Now, in this same letter of June 29, 1925 from Mr. Hollister to you, you will observe the fourth paragraph which I read to you:

" 'When you took over this license as I remember, you paid nothing for it, merely taking over the live inventory, we retaining accounts receivable

—569—

and the payables were adjusted with the inventory.

" 'It is my understanding that Mr. J. L. Spence is ready to take the license and its obligations off your hands under the same conditions, and if this is agreeable to you he has my consent as trustee of the Stentor Manufacturing Company in dissolution.'

That was the end of the quotation, and the question continued:

"Did you at any time advise Mr. Hollister or Mr. Spence that your company would let them, or Stentor, take the license and its obligations off your hands upon those same conditions? A. I have no recollection of so advising anybody.

"Q. The fact is you did not so advise anybody? A. I have already answered to the best of my recollection I did not.

• • • • • • •

—574—

• • • • • • •

"Q. Going back to your letter of August 29, 1924 to Mr. Spence, Plaintiff's Exhibit 33, you will observe that you suggest therein that Mr. Spence call upon you? A. Yes.

"Q. Mr. Spence did call upon you in response to that suggestion, did he not? A. He did.

"Q. And you had a conversation with him? A. I did.

• • • • • • •

—576—

• • • • • • •

"Q. In this conversation around August 24th between

you and Mr. Spence about which I am inquiring, didn't Mr. Spence then make the demand that these patents and these devices be applied or sought to be applied to the radio equipment field? A. That is my recollection.

"Q. Have you any recollection that he did not, or are you simply without recollection on the subject? A. I

—577—

have no distinct recollection of the discussion at that meeting, but I certainly cannot testify that Mr. Spence did or did not demand that General Motors Corporation apply these patents to the radio field.

"Q. Did you discuss with Mr. Spence in this conversation any proposed dissolution of the Stentor agreement? A. I do not recall that I did or not.

"Q. Do you remember that Mr. Spence told you in this conversation that he had an immediate market for the Stentor product in the radio equipment field? A. Yes, I do remember something of the kind.

"Q. Do you remember that Mr. Spence told you that he had interested—— A. Wait a minute, I recall that Mr. Spence did tell me something of the kind but as I have already stated, I am unable to place the date of my conversation with Mr. Spence, either in the year 1924 or 1925; I certainly cannot recall that Mr. Spence did make

—578—

that assertion as early as 1924, but at the meeting which I recall he did make an assertion that the inventions should be applied to the radio field, and that he had been in contact with outside parties who were interested in it.

"Q. And didn't he say to you that he considered that the invention could be applied in the radio field just as it then stood and without development or experimental work upon it? A. He did, and he stated that point of view with a great deal of enthusiasm.

• • • • • • •

—610—

. . . . . .

WALTER L. ECKHARDT, was called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Direct examination by Mr. Bernays:

. . . . . .

—612—

. . . . . .

Q. General Radio Corporation was organized under the laws of what State, sir? A. Delaware.

Q. And what was its business, Mr. Eckhardt? A. It was originally organized for the manufacture of radio parts.

Q. Will you tell us whether among the parts which it was organized to manufacture and sell were included head

—613—

telephones for use in radio reception? A. It was.

Q. Were there included among the parts for which it was organized to manufacture and sell loud speakers for use in radio reception? A. There was.

Q. Did your company have a trade name or designation for its head sets and loud speakers? A. It did.

Q. What was that trade name, sir? A. Music Master.

Q. Now, did your company manufacture the several component parts of these devices or did it purchase and assemble them? A. It purchased them and assembled them.

Q. Did your company have a factory and a place of business for that purpose? A. 10th and Cherry Street, Philadelphia; originally at 624 Market Street.

Q. And then it moved over to the Cherry Street address? A. That is right.

—614—

Q. Mr. Eckhardt, do you remember what was the paid-in capital with which the General Radio Corporation began business? A. Forty thousand dollars.

Q. Do you remember whether it had the full business year of 1922 for its operations or only a part of the year? A. No, the company really, I think, was organized in April, and we had about eight months of operation in 1922.

Q. Now, Mr. Eckhardt, you have heretofore been good enough to speak to Mr. Leahy and Mr. Friedman and me about your knowledge of facts concerning this case? A. I have.

Q. And you have also, I think, been interviewed by my friends on the other side? A. I had a conference with Mr. Steel one day.

Q. Have you at our request, have you at our request, Mr. Eckhardt, found and handed to us the mechanism of which the part that I hand you bears a marker, bears a marker Spence Exhibit 18, of April 11, 1939? A. I did.

—615—

Q. And of which another portion which I now hand you bears a marker Spence Exhibit 19 of the same date? A. Yes.

Q. And of which another portion bears a marker Spence Exhibit 20, of the same date? A. Yes.

Q. Would you be good enough, Mr. Eckhardt, to put those three Spence exhibits together in the relationship in which they should be and tell us what the resultant is? A. This is nominally called the base, containing the speaker unit (indicating). The speaker unit is attached to the base by the means of this collar and screws into the thread at the top or cap of the unit.

Q. Now, the portion that you have just described is the portion which bears the tag "Spence Exhibit 18," is that right? A. That is right. The gooseneck, we call this,

or the elbow, is made of aluminum. It is made of aluminum because in my past experience I found aluminum——

—616—

Q. May I stop you, Mr. Eckhardt? I am afraid some portion of that is not really responsive, so will you just limit yourself to the putting together and a description?

Now, may I stop you again? The aluminum unit of the assembly which you have just described is the one which bears the tag "Spence Exhibit 19?" A. Yes.

Q. Now, would you be kind enough to complete putting together the assembly for us? A. The mahogany wooden horn completes the job, to which is fastened a collar that fits into a little pin that retains it in position. That is the complete assembly as we sold it in this country.

Q. Now, the last portion of the assembly that you have put on, to complete the assembly, is the one which is marked "Spence Exhibit 20"? A. Yes.

Q. Mr. Eckhardt, is that exhibit in its entirety—and paying no attention, of course, to the fact that there is a break in the wood, as you will see, and that sort of thing—is that exhibit in its entirety what your company was

—617—

selling as the Music Master radio loud speaker in 1922 and thereafter? A. Yes, sir.

Mr. Bernays: I offer the entire assembly in evidence, sir.

Mr. Morris: No objection.

The Court: Admitted.

Mr. Mahaffy: 73, 73a and 73b, the base and the two parts.

(Received in evidence and marked "Plaintiff's Exhibit No. 73," "Plaintiff's Exhibit No. 73a," and "Plaintiff's Exhibit No. 73b.")

• • • • • • •

—618—

• • • • • • • •

Q. Now, you said in one of your earlier answers, Mr. Eckhardt, that in that base there was some sort of mechanism? A. Correct.

Q. Now, keeping your voice up, will you be good enough, please, to tell the jury in general what that mechanism was? A. Generally speaking it was—

Mr. Morris: May I inquire at this time about whether that mechanism about which we are to be

—619—

told is physically present in the base of this device?

Mr. Bernays: I cannot say. I have never looked. I will ask Mr. Eckhardt if he knows.

By Mr. Bernays:

Q. We are being asked to say, Mr. Eckhardt, and I have said that I do not know, and, therefore, I will have to ask you, whether the mechanism that you are about to describe is physically present in this base. Do you know? A. It is.

Q. Now, will you go ahead, please, and describe what that mechanism is, in general? A. The unit contained in this base is what is generally known to the layman as one factor of what was known as a head set. In the early days radio had use for head sets, before we knew what a good loud speaker was. This is what is literally the same as just one piece of that head set.

Q. Which piece of that head set do you refer to? A. I mean one of the receiving units, quite similar to the receiver that you might have on an ordinary telephone,

—620—

just one side instead of two.

Q. And that is the nature of the unit in that base? A. This unit is definitely a magnetic unit.

• • • • • • •

—621—

• • • • • • •

Q. Do you remember what the question was, as to whether these diagrammatic representations bear any resemblance to the unit which was placed by your company in the base of its loud speakers? A. It does.

—622—

Q. Does it bear any resemblance to the receiver unit that was assembled and manufactured by your—assembled and sold by your company in the head sets that it assembled and sold? A. Quite the same.

• • • • • • •

—623—

Q. Now, as these three parts, which are Exhibits 73, A and B, were put together so that you had the stand and the horn, were they arranged so that they could be connected in any manner with a radio receiving set? A. Quite so. They had a couple of terminals that fit into a couple of little jacks that were supplied on every radio set at that time. Some radio sets had a large jack, which required these terminals to be placed into what we call a plug, these terminals went into the plug, and the plug was pushed into the jack, and all radio sets back in those days had such jacks.

Q. And were the head phones for use in radio reception so arranged that they could be connected with a radio receiving set? A. Quite so.

Q. And in the functioning of the loud speaker you got sound reproduced through the amplifying system of the radio receiving set, is that correct? A. Quite so; was reproduced through the amplification of the set.

Q. Now, beginning with 1922 and to and including, let's

—624—

say, 1925 were you familiar, Mr. Eckhardt, with the condition of the market here in the United States in respect

of supply and demand as to these radio devices, I mean the head set and the loud speaker. A. The demand greatly exceeded the supply throughout my contact with it.

Q. And you would say that that included the period that I have referred to? A. '22 to '25 particularly.

• • • • • • •

—625—

• • • • • • •

Q. I am not sure whether I made clear this morning, or you made clear when this assembly, Plaintiff's Exhibit 73, was put together and connected to a radio receiving set and in actual operation, where was the loud speaker, outside the set, or a part of the internal structure of the set itself? A. This particular type would be outside of the receiving set.

Q. Outside. In the business of General Radio Corporation, whether under that name or the changed name of Music Master Corporation. did you use these receiver units in connection with anything except radio? A. Oh, yes, we used it as a phonograph attachment to reproduce the phonograph recordings through the loud speaker, or the radio set to which the loud speaker was attached, and also as head sets.

—626—

Q. Yes. Now, I asked you this morning about relations between demand and supply in respect of these radio head phones and radio loud speakers during the years 1922, '23, '24 and '25. What were the conditions in 1926 in that respect, as you remember? A. Well, the peak of the business really run '22, '23, '24 and '25. '26 there was quite a change; in '26 many of the sets had speakers built within the sets, and therefore reproduced directly through the speaker in the set.

Q. Now, what about conditions in '27 and '28, Mr.

Eckhardt? A. Radio business generally in '27 was not very good.

Q. And '28? A. '28 it started to pick up. '28 became a very successful year, I think the statements will carry out, and '29 was a very good radio year.

Q. Now, have you gone over with us from such records as have been available in preparation for testifying upon this trial the figures as to the results of operations of your company during the part of the year 1922 that you were

—627—

in active operations, and the years 1923 and 1924? A. I have.

Q. And did you make a note of those figures? A. I think I have them correctly.

Q. You may consult your notes if it will help you, and I will ask you, please, to tell us first what were the results of operations for that part of the year 1922 during which your company was in business? A. According to the company's figures we lost nine thousand—$3,958. According to the Government's revised figures we lost $4,707.

Q. Now, what were the results of operations for the year 1923? A. In '23 according to our records, report, we made one hundred and fifty-six thousand, and a few odd dollars, and according to the Government's revised figures they showed that we made one hundred and seventy-three thousand, nearly one hundred and seventy-four thousand dollars.

Q. And what about the year 1924? A. In 1924 we had a fairly nice year. We had according to our records prof-

—628—

its of five hundred and sixty-five thousand dollars, and according to the Government's revised figures, five hundred and sixty-six thousand dollars.

Q. Now, have you at our request totalled the net result in respect of profit or loss for that part of the year 1922

and the two years 1923 and 1924? A. Net profit before was $707,923; according to the Government's revised figures, $736,017—and some odd cents, of course.

Q. You used the word "before" in your answer; before what? A. Before the Government revised the figures, either—

Q. Oh. A. —upward or downward.

Q. I see, and was this before or after Federal taxes? A. Before Federal taxes.

Q. Now, you told us this morning that your company started with a paid-in capital of forty thousand dollars?

—629—

A. That is correct.

Q. Was that paid-in capital increased at any time thereafter? A. The capital, paid-in capital, was increased during the latter part of '22, or, rather, early in '23, to around one hundred thousand dollars, and within a few months thereafter, perhaps five or six months, it was increased to paid-in, $208,000.

Q. Now, during those years 1922, 1923 and 1924 about which you have told us what was the primary business of your company? Was it in parts or in sets? A. Principally in loud speakers.

• • • • • • •

—632—

• • • • • • •

Q. Have you any recollection at this time what approximately was the total of head sets and loud speakers sold by your company during 1922, 1923 and 1924? A. From the results and figures I have, at least three hundred thousand.

Q. Have you any recollection what the number was during 1925? A. Only by the record which I have located showing that we had taken one hundred and twenty-two

thousand some odd units on a contract which we had made for three hundred thousand dollars in December, 1924.

Q. You said three hundred thousand dollars; did you mean three hundred thousand dollars, or three hundred

—633—

thousand units? A. Three hundred thousand units.

• • • • • • •

—634—

Q. Now, I want to direct your attention, Mr. Eckhardt, to the mechanical unit which you have told us is contained or was contained in the base of Music Master loud speaker. Do I make myself clear? A. Quite.

• • • • • • •

—636—

Q. Will you describe in general terms, if you know, the construction of the mechanism in the base of your loud speaker? A. There is a case, of course, a case made either of aluminum, or often of Bakelite. Some firms might use other materials, but those are the two generally accepted materials for the base of the case.

Now, fastened into that case there was a permanent magnet to which was attached pole pieces which were wound with copper wire. The permanent magnet, naturally, was magnetized, and then the pole pieces were ground to a definite distance between the clearance of the top of the case on which the diaphragm rested, and then the cap was screwed on top of that diaphragm very securely, fastening it down rigid and tight, because if the diaphragm were a slight bit loose the speaker would be out of business and would rattle, as perhaps you have noted.

• • • • • • •

—638—

* * * * * * *

Q. Have you ever, Mr. Eckhardt, looked at the construction of an ordinary watch case type of telephone receiver? A. I have.

Q. What would you say with respect to the resemblances in physical construction between the unit as to which you are testifying and the ordinary watch case type of telephone receiver? A. In principle the telephone receiver and the unit in here is quite the same. It differs——

Q. May I call your attention——

The Court: It differs—one moment.

Mr. Bernays: I am sorry. I thought I did not get a responsive answer, sir.

The Court: It differs——

Mr. Bernays: Go ahead.

—639—

The Court: Proceed.

A. (Continued.) They were quite the same in general construction, but differed, of course, in design.

Q. Now, you have in mind that it is that unit about which I was inquiring with respect to price, Mr. Eckhardt? A. Yes, sir.

Q. Would you be good enough to tell the Court and jury, please, what prices were being paid from time to time, as you remember them, by your company for those units from the time that your company went into business in 1922? A. Originally we paid around three dollars per single unit. Finally, on a contract for three hundred thousand placed in December we had a price of $2.06.

Q. Was that the contract that you referred to earlier in your testimony today? A. It was.

Q. As to which you said that you took delivery of one hundred and twenty-two thousand? A. That is right.

Q. Now, you said that the contract for three hundred

—640—

thousand was made around December, but I do not think you mentioned the year, Mr. Eckhardt. A. 1924.

Q. Do you remember with what company that contract was placed? A. Penn Head Set Company.

* * * * * * *

—655—

Deposition of JESSE LEE SPENCE, for plaintiff.

Direct examination by Mr. Bernays:

* * * * * * *

—669—

* * * * * * *

"Q. Now, Mr. Spence, you will recollect that the agreement in suit is dated May 20, 1918. Did you have anything to do with the negotiation and making of that agreement personally? A. Well, I was present at the first discussions with Mr. W. C. Durant, then president of the General Motors, regarding the agreement.

"Q. Have you any recollection of approximately when that discussion occurred? A. It occurred in the fall I would say of 1917, or possibly the winter, or the late fall.

"Q. Of 1917? A. Of 1917.

—670—

"Q. In connection with those discussions and negotiations did you meet Mr. A. P. Sloan? A. Yes.

"Q. He is the gentleman who is now I believe chairman of the board of General Motors? A. I understand so.

* * * * * * *

"Q. Did you see Mr. Durant one time or more than one time, as best as you can remember, of course? A. I am

—671—

quite positive about three times. There may have been another time, I am not sure, but three times I am sure of, but there may have been more, I am not sure.

• • • • • • •

—672—

• • • • • • •

"Q. In any of the discussions in which you participated with Mr. Durant or Mr. Sloan was there discussion as to the technical aspect of your devices? A. Mr. Durant went over on two separate occasions the details of the free moving diaphragm and the general application of it to commercial work, covering the line or the field of operation that I explained to him personally; that is the automobile field and the paging system and ship telephones and the other articles that we had then developed.

"Q. Did Mr. Durant ever see or hear any of those devices in operation, as nearly as you can remember? A. Yes, I myself demonstrated to him the automobile telephone in his office.

• • • • • • •

—673—

• • • • • • •

"Q. Do you remember whether before the agreement of May 20, 1918, was signed any representatives of Klaxon or United Motors or General Motors came to your place of business in Long Island City? A. Yes.

"Q. Did they inspect the place of business? A. They came there for that purpose.

"Q. Do you remember the identity of any of those people by name or by their official status or relationship? A. Mr. Friend of the United Motors——

"Q. Is that Mr. O. C. Friend, do you remember? A.

Mr. O. C. Friend, yes. Mr. McConnell of the Klaxon Company. And some one from the Remy Electric Company of Indiana, whom I do not remember. I do not remember the name.

"Q. Do you know what his capacity was? A. I do not know.

—674—

"Q. Do you know whether he was an engineering man or—— A. He was an engineer.

"Q. You ascertained that at that time? A. Yes. I was pleased to have him go over the engineering details with me.

"Q. Now will you tell me briefly and generally and in quite your own way just what inspections or investigations these gentlemen whom you have referred to made at your plant? A. They made inquiries as to the actual operation of the articles themselves and we demonstrated to them the general operation of loud speakers for the different uses that we had then developed. They were interested in the facilities for production that we had. And that is as far as I know it extended to.

"Q. Did they go over any of your drawings with you? A Yes.

"Q. Did any of these gentlemen go with you into the mode of setting and mounting the transmitter and re-

—675—

ceiver diaphragm? A. Yes, in detail, because we were assembling the receiver unit, the receiver case with housing into the loud speaker unit housing at the factory there. We were also assembling a few transmitters at that time I think.

"Q. At your Long Island City factory? A. Yes."

• • • • • • • •

Deposition of Jesse Lee Spence—for Plaintiff—Direct

By Mr. Bernays:

"Q. Now after this agreement which is Spence Exhibit 14 had been signed do you remember, Mr. Spence, whether you continued to be at the Stentor factory at Long Island City in and about the performance of your daily duties or were you moved elsewhere? A. I continued with the work at the Long Island City plant for about three weeks or a month and I was then transferred to the Klaxon factory at Newark. I was at the Klaxon factory for possibly a month or six weeks and was then transferred to the

—676—

United Motors offices in the Aeolian Building on 42nd Street in New York City.

"Q. How long did you remain with your office at the offices of the United Motors at the Aeolian Building? A. As far as I can remember, I was there until the termination of the contract, of my contract of employment with the Klaxon Company.

"Q. That is, for the year that employment ran, from May 20? A. From May 20, 1918.

• • • • • • •

—687—

• • • • • • •

"Q. Do you remember whether any of the staff or personnel, whether executive or technical, of United Motors or the Klaxon Company consulted you with respect to making improvements in your apparatus and devices between approximately May of 1918 and approximately May of 1919? A. They did not consult me.

—688—

"Q. Were you asked to advise with respect to any problems of imperfection in the apparatus and devices or with respect to making any improvements in them during the period about which I am inquiring? A. I was not.

• • • • • • •

—689—

• • • • • • • •

"Q. My question was as to what you next did. A. I went to see Mr. Carroll the next time in about sometime in February of 1925, and I told Mr. Carroll that I had come to see him on other occasions, that I had suggested that the radio field for radio head sets offered a definite and wonderful outlet for the use of Stentor units, and that nothing had happened, nothing resulted from my telling him that this tremendous market existed. And so at this visit in 1925 I told him that I had personally been to the Music Master Corporation in Philadelphia, that I had taken all the trouble to have the Stentor loud speaking unit attached to a Music Master horn and had made direct

—690—

comparative tests as to the results in the use of both the Music Master unit and horn and the Stentor unit and horn; that I had seen Mr. Eckhart in Philadelphia, then the president of the Music Master Corporation, and had the assurance from him that he considered the Stentor unit in connection with their horn to be superior to what they were then using, and that they would be in the market for a very large quantity beginning in the near future; he mentioned a quantity of 800,000 such units; and that if I would prepare a schedule of production and deliveries and furnish him with the assurance that such a production schedule could be lived up to that there was no reason why we should not get an order or orders for a great part of this business.

"Q. When you say furnish him with such a schedule, whom do you mean? A. Mr. Eckhart of the Music Master Corporation.

"Q. Will you go ahead? I am sorry I interrupted you.

—691—

A. I explained to Mr. Carroll in detail the trouble that I

had taken to reach this point, that I had had the test made first in New York City in the presence of Mr. William Smith and Mr. Leach of the Electric Industries Company and Mr. Harrison Osborne, but specifically in the presence of Mr. Smith because I had understood that he could influence if necessary Mr. Eckhart in the placement of his orders. Mr. Eckhart assured me, however—

"Q. May I stop you for a moment? A. Yes.

"Q. Because as I understand you have been telling us about your conversation with Mr. Carroll. A. Yes.

"Q. Will you continue with your conversation with Mr. Carroll? A. I told Mr. Carroll that we had had a test in New York.

"Q. Oh, I see, you are telling us what you told Mr. Carroll? A. Yes, I told Mr. Carroll that we had had this

—692—

test in New York and that Bill Smith had been present and that Mr. Smith was active in the refinancing of the Music Master Corporation and that practically we had the inside track on orders placed by them; and that was only one of a great number of prospective customers that could be obtained if they went after the business. I am quite sure that I emphasized the importance of the sale at that time of radio loud speakers to the Music Master because they were, as I explained to Mr. Carroll, the outstanding—they had the outstanding loud speaker on the market; and if we got their order we could go almost anywhere in the sale of the equipment.

"Q. Now did you tell Mr. Carroll anything about a visit that you had paid to Philadelphia with the equipment? A. I thought I had said that.

"Q. Oh, has that been covered? Then that is my mistake, sir. Have you substantially finished what you told

—693—

Mr. Carroll? I did not mean to interrupt you. A. I was

more emphatic about the whole matter of the Klaxon Company going into the business at this time than I had been at any previous visit to Mr. Carroll. I told him that nothing had resulted and that I was getting out of patience.

"Q. Now what did Mr. Carroll say to you? A. Mr. Carroll told me that he would take the matter up and let me know.

"Q. Was that all the response you got from Mr. Carroll? I mean in this conversation of course. A. That was definitely the only thing that Mr. Carroll would commit himself to.

"Q. Now you mentioned a Mr. William T. Smith. With what organization was Mr. Smith connected in late 1924 and early 1925, Mr. Spence? A. He was vice-president of the W. A. Harriman Company, 39 Broadway."

• • • • • • •

—714—

Cross examination by Mr. Morris:

• • • • • • •

Mr. Morris: This deposition of Mr. Spence, one of the trustees after dissolution of Stentor Electric Manufacturing Company, plaintiff, was taken on March 23, 1939, at 40 Wall Street, New York City, by Mr. Bernays. Question 35, page 12:

"35Q. Now, Mr. Spence, would you be good enough to state on the record briefly the respects in which the telephone receiver concerning which you got the United States patent which is in evidence represented departure from the prior practice in that field? A. The diaphragms in telephone receivers up to that time were clamped rigidly in position and flexed or moved in the center. They gave off just the usual sound if you hold them to your ear, but were not in any sense loud speaking telephones which we were searching for. The final development of the Stentor receiver, or loud speaker units as we prefer to call them,

—715—

had the diaphragm mounted so that it could move freely instead of being rigidly secured at the edges. It also differed from the ordinary telephone receiver in that the diaphragm did not vibrate. We count on the vibrations of the telephone receiver diaphragm to give it the sound. We counted on the movement of the receiver diaphragm as a whole in the Stentor development to produce a sound. The reason we wanted to get away from the vibration method of creating sound was in that method the vibrations that were peculiar or inherent in the metal used would be carried into the tone produced by the forced movement of the diaphragm. It is called distortion of sound in the simplest form, and we wanted to produce a pure note as much as we could. We had to get away from the clamp to give amplitude of sound and get a pure note, so as I say the final development was a rigid—

The Court: To get what?

Mr. Morris: To get a pure, pure; pure note.

—716—

The Court: "Amplitude of sound" was the phrase.

Mr. Morris: May I start that sentence again? "We had to get away from the clamp to give amplitude of sound . . .", was that the—

The Court: Yes.

Mr. Morris: ". . . amplitude of sound and get a pure note, so as I say the final development was a rigid receiver thick enough so that it would not flex and secured lightly enough as best we could so that it could move freely. We termed all this, I think it was the first time the term was used, having a piston motion.

"36Q. In the diaphragm? A. In the diaphragm mounted in the receiver, a piston motion.

"37Q. Will you state, please, whether there was any particular or preferred method of mounting the diaphragm in the Stentor receiver which was used by you in the production or the putting together of that receiver which corresponds to the description in the patent which is in evi-

—717—

dence? A. There was a definitely preferred mechanical arrangement."

"38Q. Will you go ahead and state then? A. We experimented with other means of supporting the diaphragm, springs on both sides of it, as light as could be made, but we decided finally on the rubber tubing, hollow rubber tubing, as giving us the most satisfactory results."

Page 19, Mr. Bernays.

Mr. Bernays: Judge Morris, would you mind also reading 39Q before you read that page?

Mr. Morris: 39Q?

Mr. Bernays: Yes.

Mr. Morris: 39Q is:

"Did you put hollow rubber tubing on one side only of the diaphragm or both sides? A. We mounted it on both sides. The patent covers one side or both sides, but I prefer to mount it on both sides and we have always done that."

Mr. Bernays: Thank you, sir.

—718—

Mr. Morris: 19, question 54. I think 53 is necessary in order to make that intelligible; 53, then:

"53Q. Had you before application for patent determined what in your judgment or opinion would be the desirable thickness and diameter for that diaphragm? A. Yes.

"54Q. Will you state please what thickness you determined upon if you remember? A. .018,"—I suppose that is in thousandths of an inch, isn't it?—"I would think that was the approximate size. In ordering our material for diaphragms we specified .018; we might have run down to .016 or .017 or might have run up to almost .020 sometimes. It was not exactly uniform."

• • • • • • • •

—719—

Mr. Morris: 81Q. I am sorry, 55Q, back at 19, which is a continuation of the other:

"Do you remember whether after procurement of the patent in September, 1914, you made any changes in the thickness of the diaphragm? A. We did not."

Now, then, page 29, Q81:

"Do you remember at this time upon what thickness you finally decided as being in your judgment the desirable thickness for the manufacture of a Stentor transmitter? A. I wish I might say the exact thickness that was specified. I can only say that we tried diaphragms from a few thousandths of an inch up to one eighth of an inch thick, actually had them made for us at that thickness to try. The actual thickness was around .012, but I am only speaking from my recollection, but the thickness was selected again to give it a piston motion and not a flexure motion."

• • • • • • • •

—720—

"82Q. Was the diaphragm selected with any relationship to its rigidity or non-rigidity under operating stresses, Mr. Spence? A. As for the rigidity the selection was made for that as distinguished from the quality of the carbon at the time itself, which was a separate experiment, sepa-

rate determination. We had to get the result from the quality of the carbon diaphragm as well as the thickness. The conductivity is important."

Mr. Morris:

"Was the thickness of the diaphragm in the ordinary

—721—

telephone receiver as great as the thickness of the diaphragm in the Stentor receiver, Mr. Spence? A. No, it was not."

* * * * * * *

"588Q. The diaphragm in the ordinary telephone receiver operated, as I think you have testified, on the principle of the flexure of the diaphragm itself in its body? A. Yes.

"589Q. Could you use satisfactorily for that mode of operation of the diaphragm, diaphragms as thick as those which you used in the Stentor receiver? A. No, you could

—722—

not."

* * * * * * *

Mr. Morris: In reply to a question the witness testified:

". . . at all times we always used a rigid diaphragm, and we had to."

Mr. Morris:

"And in practice in the manufacture of the Stentor

—723—

receiver did you fasten the diaphragm tightly between the sections of rubber tubing or only lightly? A. As lightly as possible, just draw it up very carefully with the clamping ring, and they would test it by hand to feel if it could still move; always did that in the assembly."

That changes my sequence just a little, and I want to turn now to a question in cross-examination of Mr. Spence. At XQ2441, on page 659, Mr. Spence was asked:

"Mr. Spence, is there any compression of either tube 14 or 15 when the diaphragm 13 is mounted in the device illustrated in figure 1 of the patent 1112392 before the diaphragm is subjected to a magnetic pull? A. Yes, there is, on both of them."

"83Q. With respect to the thickness of the diaphragm did you select it so that it would be in your opinion rigid or non-rigid under operating stresses? A. The whole pur-

—724—

pose of our experimental work was to develop a rigid diaphragm.

"84Q. And in the manufacture of the Stentor transmitter did you select and specify the thickness of the carbon of the diaphragm so that you would have a diaphragm that was rigid or non-rigid under operating stresses? A. So that we would have a diaphragm that was rigid."

Mr. Bernays: Judge Morris.

Mr. Morris: Yes.

Mr. Bernays: In view of the fact that the first question that you read does not specify whether you are reading the thing with respect to the receiver diaphragm or the transmitter diaphragm I wonder if you had not better state upon the record which it is, because, of course, you have got the two separate instruments. The record might—

Mr. Morris: I think that was the transmitter, was it not?

Mr. Bernays: I agree with you, sir, but I did

—725—

not wish to make the statement until you had said so.

Mr. Morris: Yes, that pertains to the transmitter.

"110Q. Are you able to state after these intervening years whether it was in 1913 or 1914 to the best of your present recollection that your company first began manufacturing apparatus commercially? A. 1913".

"123Q. Let us take the transmitter first. With respect to the balance of the transmitter, that is to say, the portions of the transmitter other than the diaphragm mounting, what did that consist of? A. We had never developed a special transmitter other than the diaphragm mounting. We used at that time the Stromberg-Carlson parts of their transmitter, which we considered the most highly developed transmitter in the market."

—726—

"Mr. Morris: In order to make sure I understand, Mr. Bernays, this was all standard equipment? Do I understand the testimony to be that this was all standard equipment except the diaphragm and diaphragm mounting?

"Mr. Bernays: Yes. As I understand it the testimony is—and the witness can correct us if I misapprehend his testimony in any respect—both with respect to the transmitter and with respect to the receiver the parts were standard, purchased from the sources that the witness told us, except the diaphragm and the mounting of the diaphragm in each case.

"Mr. Morris: I assume that you would extend

—727—

that not only to the receiver and transmitter but to the patent as well, that is the patents you referred to this morning?

"Mr. Bernays: I would rather that Mr. Spence state that himself, to whatever extent may be necessary.

"Mr. Morris: All right. I was just trying to see whether I followed you there.

"137Q. Do I understand you to say that Judge Morris is entirely correct, sir? A. He is entirely correct. We had no development work in the receiver or the transmitter other than the diaphragm itself and the mounting of the diaphragm."

• • • • • • •

—728—

• • • • • • •

Mr. Morris: 137Q I will re-read:

"Do I understand you to say that Judge Morris is entirely correct, sir? A. He is entirely correct. We had no development work in the receiver or the transmitter other than the diaphragm itself and the mounting of the diaphragm.

"Mr. Morris: That is right.

"138Q. Those are the things that the patent turned on? A. That is all we covered.

"Mr. Morris: Do I infer, in order that the picture may be complete, do I understand that there were other receivers and transmitters on the market? I do not mean the diaphragm.

"The Witness: I understand you perfectly.

—729—

There were on the market at that time receivers of very high quality and transmitters of very high quality which had been on the market for years.

"Mr. Morris: By that time you mean 1913, or something like that?

"The Witness: Yes, sir.

"Mr. Morris: All right. That enables me to follow it.

"Mr. Bernays: I am happy to have you do it.

"Mr. Morris: Thank you very much.

"Mr. Bernays: I think perhaps we can make the record even clearer and the picture even clearer if I put this next pair of questions, Judge Morris.

"Mr. Morris: All right.

"139Q. So far as the Stentor receiver was concerned, wasn't it just an ordinary watch case telephone receiver with a special form of diaphragm and diaphragm setting and mounting? A. It was exactly that, but determined only after the particular type that we wanted to use as

—730—

being the highest quality; I mean Stromberg-Carlson and Western Electric and Stanley Patterson, to anyone of the standard articles on the market.

"140Q. And the same thing was true of your transmitter? A. Yes.

"141Q. Standard in every respect? A. Yes.

"142Q. Except as to the diaphragm and mounting? A. Yes.

"143Q. Mr. Friedman suggests I ask you this question, Mr. Spence, would your statement as to your Stentor receiver being identical in all respects with any high grade type of receiver except as to the diaphragm and the diaphragm mounting, also apply to the winding around the pole pieces in the receiver? A. It would apply in the manufacturing sense, because the pole pieces and the permanent magnets were never changed. The winding was changed in the standard telephones as well as ours for the

—731—

different uses to which they were put."

"301Q. Looking at the inside of this Critchfield Exhibit 13,—

Mr. Bernays: Here it is, sir.

Mr. Morris: I don't believe Your Honor has seen this. I want to pass it to the jury. It was put in yesterday by Mr. Bernays. We are going to talk about just one sentence, about what is called the ring, clamping ring, on top. You might be interested in looking just for a second at that structure.

(Discussion with the Court off the record.)

Mr. Morris: That screws in that way. I will let you take it.

(The device was shown to the jury.)

Mr. Morris: This is a question by Mr. Bernays:

"301Q. Looking at the inside of this Critchfield Exhibit 13, are you able to recognize the brass looking ring as being similar to or different from the brass looking ring of

—732—

the type used by the Stentor Company? A. The name given to this ring in our detailed drawing was a clamping ring.

"302Q. Clamping ring, I am sorry. A. And I recognize it as a standard mounting in the manufacture of these things."

• • • • • • •

—745—

Redirect examination by Mr. Bernays:

• • • • • • •

Mr. Bernays: There was read into the record upon the cross the following question and answer. Question——

"Incidentally, in the second paragraph of Defendant

Spence Exhibit 2"—which is now, gentlemen, Plaintiff's No. 79—" I find the following statement:

"'I have tried to interest both sides in radio as a more extensive field, without success.'

"Who were the 'both sides' which you were referring to in that letter? A. I was referring directly to the Klaxon Company as party to the agreement made with the Stentor Company and to the other parties originally interested

—746—

with me in the Stentor Company.

"971XQ. You mean the Stentor Company? A. In the Stentor Company."

• • • • • • •

—747—

• • • • • • •

—747—

Mr. Bernays: I shall read, Judge Morris, from the redirect upon Mr. Spence's deposition, beginning with question 2443, at page 660:

"Mr. Spence, I call your attention to Defendant

—748—

(Spence) Exhibit No. 2,"—which is now Plaintiff's 79—"being the letter from you to Mr. Hollister dated May 14, 1923, and direct your attention particularly to the opening words of the second paragraph, which are as follows:

"'I have tried to interest both sides in radio as a more extended field, without success.'

"You have testified to Mr. Steel on his cross examination that both sides there refer to Stentor and Klaxon? A. Yes.

"2444RDQ. With whom on behalf of Stentor were you

active in trying to interest Stentor in radio as a more extensive field, I mean apart from yourself as a dissolution trustee, of course? A. Mr. Hollister.

"2445RDQ. Will you state, please, whether Mr. Hollister stated to you any position as a dissolution trustee of Stentor with respect to having your loud speaker unit put into radio?"

—749—

"A."—and he started an answer which was interrupted, and then he said, "Yes, he did," so to get the context I shall read it to you: "Will you state, please, whether Mr. Hollister stated to you any position as a dissolution trustee of Stentor with respect to having your loud speaker unit put into radio?"

• • • • • • •

"A. Yes, he did.

"2447RDQ. Will you tell us, please, what position Mr. Hollister did state to you as a dissolution trustee on that subject matter? A. He constantly maintained the position that the agreement which we had made with the General Motors was a proper and binding agreement, and that we had every right to expect that they would go into the radio business with these instruments, and he did not care to disturb that agreement.

"2448RDQ. Did Mr. Hollister say to you any position as a dissolution trustee of Stentor with respect to whether or not he desired to have the Stentor loud speaking unit

—750—

put into radio, and will you try to answer the question also yes or no? A. Yes, he did.

"2449RDQ. What position did he state to you on that subject? A. That his responsibility as a trustee was in his opinion confined to insisting that the agreement with

the General Motors should be carried out, rather than to make any departure from that agreement.

"2450RDQ. You have several times referred to the agreement between Stentor and General Motors. Were you referring to the agreement in suit here? A. Yes.

"2451RDQ. Which is with th Klaxon Company? A. Yes.

"2452RDQ. Did Mr. Hollister as a dissolution trustee state to you any position with respect to whether under that agreement he desired to have Klaxon put the Stentor loud speaking unit into radio or not, and again I will ask you to answer yes or no to that question.

—751—

"A. Yes.

"2453RDQ. What position did Mr. Hollister state to you on that score? A. That he considered that the General Motors were obligated to handle that part of it themselves. He considered that General Motors—took the position that General Motors were obligated to do these things."

• • • • • • •

—778—

Deposition of FOUST H. CHILDERS, witness for plaintiff.

Direct examination by Mr. Bernays:

• • • • • • •

"Q. What is your employment, Mr. Childers? A. Advertising manager, Delco-Remy Division.

"Q. Of General Motors Corporation? A. Right.

"Q. Where are you located? A. Here at Anderson."

• • • • • • •

"Q. Do you remember, Mr. Childers, when the Klaxon
—779—
and the Stentor operations were brought over here to Remy sometime in 1924? A. 1925, I believe.

"Q. Let me suggest to you that the testimony heretofore has been quite uniformly to the effect that it was 1924. I am wondering whether you are possibly in some confusion as to the dates. A. It may be, I won't be positive about that date. I know that they came over in the fall of the year.

"Q. Let me ask you this, which may help fix the date. Do you remember or have you found anything in your records which will indicate to you when you first supervised the preparation or placing of any written or pictorial advertising or combination of written and pictorial advertising for Stentor products? A. In November 1924.

"Q. And do you remember, or have you found any record which will enable you to remember when the first such advertising actually appeared or was actually distributed, if it was advertising other than in a newspaper or publication? A. Let me ask a question.

—780—

"Please do. A. Does this include anything outside of publications?

"Q. To make it clear, what I have in mind is this: You have told us, Mr. Childers, that your first instance of supervising or preparation of any written or pictorial advertising for Stentor products was in November of 1924. Do you recollect that? A. That is right.

"Q. Written or pictorial advertising might be advertising which appears in a newspaper, in a magazine, it might be in a magazine of general circulation, it might be in a magazine of special circulation, or, again, it might be in the form of circulars you sent to a mailing list, or letters you sent out to possible customers, that sort of

thing. Now, what I want to find out is when, if it was advertising that was published in some kind of a publication, whether newspaper or magazine, the first advertisement actually appeared, or, if it was written and pictorial advertising, such as is sent to a mailing list, when it was

—781—

first distributed. Do I make myself quite clear? A. Yes, sir.

"Q. Can you give us that date now? A. November 1924, this advertisement that you see before you.

"Q. Would you call my attention to the advertisement to which you refer? A. This one.

"Q. You are calling my attention—— A. (interposing) I beg your pardon. That other date should have been —as I remember, that date was November.

"Q. Let us get the record clear. The advertisement to which you call my attention is a proof numbered R-24-26? A. That is right.

"Q. And upon looking more closely at that advertisement you have now observed it is dated September and not November of 1924. Is that right? A. Right."

• • • • • • •

—782—

• • • • • • •

"Q. Now, Mr. Childers, I call your attention to the fact that so far as I am able to observe, there is nothing on this proof • • • which mentions any Stentor product. Will you look at the exhibit and call my attention to what there is upon it that does mention any Stentor product of any kind? A. Well, we understood it to be a part of the Klaxon line of products.

"Q. You mean that that was the understanding of the advertising department? A. That is right.

"Q. But it is the fact, is it not, that there is no men-

tion of the word 'Stentor' anywhere upon this advertisement, Childers' Exhibit No. 1? A. That is right."

• • • • • • •

—783—

• • • • • • •

"Q. Coming now to proof which is numbered R-24-27, do you find any mention thereon by actual naming of Stentor or Stentor products? A. No."

• • • • • • •

"Q. Now, to shorten the matter, Mr. Childers, as a matter of mechanics, I am going to have the reporter mark the proofs of advertisements that are before us as successive exhibits, beginning with Childers' Exhibit No. 3, and when he has done that I will ask you to be good enough to look at these proofs and tell me whether you find Stentor named in any of them, and if so call my attention to those of them in which you do find Stentor named. A. Not the word Stentor as such.

—784—

"Q. Do any of those advertisements comprising Plaintiff's Childers Exhibits Nos. 1 to 10, both inclusive, mention any Stentor product, and if so, which advertisement and which product? A. No.

"Q. None of them does. Is that right? A. That is right.

"Q. You have been making, Mr. Childers, have you not, a search for sometime now for copies of advertising or specimens of advertising with reference to Stentor products? A. I merely looked for the proof book from the Klaxon Company and selected these ads that ran immediately after the consolidation of the two companies.

"Q. When you say 'these ads', being the ads last mentioned by you, you mean the ads which are Childers' Exhibits Nos. 1 to 10, both inclusive, is that right? A. Yes.

"Q. It is customary in your department, is it not, to keep records of your proofs of advertising? A. Yes.

—785—

"Q. And your records, I observe from Childers' Exhibit No. 1, certainly go back as far as September of 1924? A. That is right.

"Q. Have you in your records been able to find a proof or copy of any advertisement mentioning a Stentor product of any kind? A. Just that proof book.

"Q. The proof book to which you refer, being the proof book of the Klaxon Company which runs through a period from 1918 to 1921, which I now hand you. Is that correct? A. That is right."

• • • • • • •

—788—

"Q. So far as your department is concerned, Mr. Childers, are the records of actual advertisements and proofs of advertisements of that department during the period of time that you have been the advertising manager in orderly shape? A. Yes.

"Q. Copies of advertisements or proofs of advertisements, as the case may be, being filed in a file designated for that purpose? A. Yes.

"Q. And such copies of advertisements or of proofs of advertisements being filed in such files chronologically? A. Yes.

"Q. Are all of your records to which I refer complete, so far as you know, for the period between July 1, 1924 and September 29, 1931? A. Yes.

"Q. And did you in the time that you have told us that you devoted to this search go through those records to find any advertisement or proof of advertisement in which the Stentor product was named, limiting myself now to

—789—

advertisements between the period July 1, 1924 and September 29, 1931? A. Yes.

"Q. Did you find any advertisement or proof of advertisement in that period in which the name Stentor appeared?

"Mr. Steel: Now, you are speaking again of pictorial advertisements or written advertisements of some character?

"Mr. Bernays: All my questions from the beginning of the examination down to the present point, Mr. Steel, refer to that kind of advertising. Now, may I have the question and answer before the colloquy, so I may know where I am?

(The last preceding question was read by the reporter as follows: 'Did you find any advertisement or proof of advertisement in that period in which the name Stentor appeared?')

"The Witness: No.

"Q. Or any advertisement or proof of advertisement in which any Stentor product was advertised? A. Not as such.

—790—

"Q. Will you explain to me what you mean by the statement, 'not as such,' because I am afraid it is not altogether clear to me? A. In our advertising we listed products in general terms, using a general word to cover a type of product. We did not attempt to list all of the products that we manufactured.

"Q. Did you find any advertisemgnt or proof of advertisement in which an automobile telephone was mentioned? A. No.

"Q. Or in which any other product was mentioned which was or might have been a Stentor product, so far as you know? A. Only our understanding that it was a part of the Klaxon line.

"Q. Did you in that search find any advertisement or

proof of advertisement which mentioned marine telephones? A. No.

"Q. Or telephones for installation upon vessels of any kind? A. No.

—791—

"Q. Or railroad dispatching systems? A. No.

"Q. Or office inter-communicating systems? A. No.

"Q. Or apartment house telephones? A. No.

"Q. Or paging systems of any kind? A. No.

"Q. Or window demonstrators which are worked by the use of human speech transmitted from the inside to auditors on the outside? A. No.

"Q. Or window demonstrators of any kind? A. No.

"Q. Or telephones installed or for installation in military tanks? A. No.

"Q. Or telephones installed or for installation in airplanes? A. No.

"Q. Or telephones installed or for installation in mines? A. No.

—792—

"Q. Or telephonic devices or installations of any kind for transmission of human speech to be used as announcers or announcing methods? A. No.

"Q. Or of Stentor Autophones? A. No.

"Q. Or of automobile telephones of any kind? A. No.

"Q. Or of automobile cigar lighters? A. No.

"Q. Or of electric cigar lighters of any kind? A. No."

* * * * * * *

—798—

HENRY GEORGE LEACH, was called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Direct examination by Mr. Bernays:

* * * * * * *

—800—

Q. Mr. Leach, have you attended any technological schools or academies in which you have received technology training? A. I have.

Q. Will you state, please, where you have attended, and how many years. A. Stevens Institute, at Hoboken, two years; Pratt Institute of Brooklyn, two years.

Q. You said Stevens Institute, of Hoboken; is that the institution known as Stevens Institute of Technology? A. It is.

Q. Located at Hoboken? A. Hoboken, New Jersey.

Q. And Pratt Institute is also a technological institution? A. It is.

Q. By the way, I omitted to ask you, how long did you go to, did you attend at each of those institutions for instruction? A. Two years at both.

Q. Did you graduate from either of them? A. Pratt Institute.

—801—

Q. Now, while you were at those places of instruction what character of technology instruction did you receive and take? A. Mechanical engineer as a major, and electrical engineer as a side.

Q. Now, would you be good enough to mention, going as far back as your memory conveniently will carry you, your major practical experiences and employments in the

field of engineering, and particularly electrical engineering, Mr. Leach. A. I am afraid I do not quite understand that question.

Q. Well, tell us the names of the companies or organizations for which you have worked over a period of years in the fields of engineering. Is that clearer? A. That is clearer, but my capacity was not always an engineer.

Q. Well, then, give us a recital of your employments and tell us what your capacities were in those employments. A. Marconi Company, Marconi Wireless Corporation of America, assistant maintenance and service of

—802—

vessels, of the radio transmitters; Electrical Industries Manufacturing Company, New York, apprentice engineer.

Q. Was that during the time when your father, your late father, was the head of that company, Mr. Leach? A. It was. Stentor Electric Company, Fifth Avenue, New York.

Mr. Morris: I didn't get that, Stentor Electric Company, what?

Mr. Bernays: Fifth Avenue, New York, I think Mr. Leach said.

Mr. Morris: All right.

A. (Continued) Sperry Gyroscope Company, Brooklyn, assistant in charge of altitude meters and quench gap transmitting equipment; United States Navy, testing Diesel engines and depth charges; and after the War, Electrical Industries, of New York.

By Mr. Bernays:

Q. And you have been with the Electrical Industries, your present company, continuously since that time? A. I have.

Q. Will you tell us in what capacities you have served the Electrical Industries Company, and in what capacity

—803—

you are now serving it? A. Up until 1932, production, design, engineering; 1932, management.

Q. Since 1932 what office have you held in the Electrical Industries Company? A. President.

Q. What occurred in 1932 which brought about the change in your capacity and office? A. Father passed away.

Q. Now, you mentioned the Stentor Company. Is that the same company which is the plaintiff in this suit? A. It is.

Q. Have you any recollection after this passage of time how long, about how long you were employed at the Stentor Company? A. About nine months.

Q. Was that a good many years ago, Mr. Leach? A. It will be about in 1914, latter part, early part of 1915.

Q. Now, prior to this period of employment at the Stentor Company had you had any observation of or experience with Stentor apparatus or devices at the Electrical

—804—

Industries? A. I had.

Q. Would you state briefly just what experience and observations you had had. A. Experience of manufacturing the parts and the assembly work.

Q. That work was then being done at the Electrical Industries Manufacturing Company, Mr. Leach? A. It was.

Q. For and on behalf of the Stentor Company as one of its customers? A. Correct.

Q. Now, I think you stated a moment ago that the business of the Electrical Industries Manufacturing Company is the construction of equipment to customers' specifications. Is that a correct re-statement? A. Yes, sir.

Q. Has your company specialized in any particular kinds or fields of equipment in which it has done the kind of work that you have described? A. It has, in telegraph, automatic telegraph transmission and telephone communications, both for oral—I misspoke myself then.

—805—

By Mr. Morris:

Q. Won't you repeat that? A. Telephone communications, radio, and also line.

By Mr. Bernays:

Q. And also what? A. Line, wire.

Q. When you say "line" what do you mean, wire communication? A. By wire.

Q. I see. Has your company built radio head sets for customers? A. It has.

Q. Radio loudspeakers or parts therefor? A. Not radio loudspeakers; radio units.

Q. For use in loudspeakers? A. For loudspeaker use.

Q. Has your company among other things ever manufactured for its customers telephone transmitters or microphones? A. It has.

Q. Is the activity of your company limited to building

—806—

to specifications for customers, or do you give any service to your customers in respect of design and development of apparatus, Mr. Leach? A. We give the service if it is required or requested.

Q. On design and development? A. On design and development.

Q. Is that a field within which you have yourself worked over a period of years? A. I have.

Q. Now, would you be good enough to name for the Court and jury some of the organizations for which your

company has over a period of years manufactured or designed or helped develop telephone instruments for use either in wire telephone or in radio, whichever it was. A. R. C. A.

Q. What have you manufactured for R. C. A.? A. At one period, loudspeaking units, the internal mechanism only.

Q. The internal mechanism of loudspeaker units in what field? A. Radio.

—807—

Q. Radio. What else have you manufactured for R. C. A., among other things? A. Some of the sound equipment for the projection of talking movies.

Q. What else, if anything? A. That is about all for R. C. A.

Q. Now, will you name some of the other organizations for which you have manufactured equipment of a similar kind, or parts or units of such equipment? A. Pertaining to telephone equipment?

Q. Yes, telephone equipment for use either with wire telephone or with radio or wireless. A. Marconi Wireless Corporation of America, and also of Canada and England; United States Navy; English Navy; Crosley Radio,—

Q. Which was that last? A. Crosley Radio—the Gem Earphone Company, and several others.

Q. Have you ever manufactured equipment or parts or units for any of our national telegraph transmitting companies? A. We have.

—808—

Q. Would you name for which ones, please? A. Western Union and Postal Telegraph, International—no, pardon me, All-American Cables.

Q. Now, you have said that Electrical Industries manufactured or assembled or both for the Stentor Company. Taking as the beginning the period, let us say, about 1914,

which is when I think you said you were with the Stentor for a while,— A. The latter part of 1914.

Q. The latter part of 1914; well, taking around that, beginning around that period, how long did your company continue to manufacture or assemble for the Stentor? A. Up until the time Klaxon Corporation took it over.

Q. Now, the agreement in suit and the take-over are of May 20, 1918. Would that agree substantially with your recollection of when the change occurred? A. It would.

Q. You will have to keep your voice up— A. Pardon me.

Q. —when you hear a street car, because that is a lot

—809—

of competition. After that occurred did your company manufacture for or sell to the Klaxon Company? A. We did.

Q. What did you manufacture for the Klaxon Company and sell to it? A. German silver connecting ring that is used in the Spence type transmitter and also the receiver shell assembly.

Q. Well, now, the receiver shell assembly, so that it may be clear here what is being said, is that the brass casing which contains the magnetic unit, the magnetic portion of the unit? A. It is a threaded brass case that contains pole pieces of magnet and connection block.

Q. Now, when you said the shell casing, you meant that entire mechanism? A. The entire assembly.

Q. Let me show you, for example, purely for purposes of illustration, the shell assembly, I suppose you would call it,— A. That is right.

—810—

Q. —of Plaintiff's Exhibit 75-A, and will you tell the jury whether you were manufacturing that for Klaxon after Klaxon took over? A. We were manufacturing for Klaxon the units similar to this.

Q. And was there a time when you manufactured and delivered similar units to Remy, out at Anderson, Indiana? A. There was.

Q. And Delco-Remy? A. Yes.

Q. By the way, in preparation for coming down here to testify you have, have you not, at our request looked through such of your records as have survived all these years and tried to refresh yourself on manufactures and deliveries of a kind that I have described to Stentor and Klaxon and Remy and Delco-Remy? A. I did.

Mr. Morris: May I ask a question at this time, as to whether he has his records with him?

Mr. Bernays: He has, sir.

Mr. Morris: Very good.

By Mr. Bernays:

Q. And you have been interviewed by us, have you,

—811—

Mr. Leach? A. Yes, sir.

Q. And by Mr. Spreen on behalf of the defendant, the gentleman who sits there (indicating)? A. Yes, sir.

Q. Now, I show you four sets of papers, Mr. Leach, the first set of which is entitled on its face Stentor Electric Manufacturing Company, at least, on the first sheet, the second of which begins on the second sheet, Klaxon Company, the third set of which begins on the first sheet, Remy Electric Company, and the last one of which begins on the first sheet, Delco-Remy Division General Motors Corporation, and ask you to tell us, please, how those sheets were prepared. A. They were prepared from the original sales books.

Q. And by whom were they prepared? A. By Mr. Spreen.

Q. Well, that is, you mean that you turned over your original sales books to Mr. Spreen? A. I did.

Q. And under his supervision those compilations were prepared? A. I imagine.

—812—

Q. At any rate, where did you get those compilations? A. They were mailed to me, at least, delivered by a messenger, at Red Bank.

Q. From General Motors—I beg pardon. A. At Red Bank.

Q. At Red Bank, from General Motors? A. From a law concern, I just don't remember the name.

Q. I see, and all that was in connection with the preparing for giving your testimony on this trial? A. Yes, sir.

Q. May I say to you, then, if I may have leave, sir, that if at any time I ask you questions with respect to which it would be helpful to look either at those compilations that you have there or at these original records—that is what this package is, isn't it (indicating)? A. That is.

Q. —at these original records, I think both sides will agree that you have leave to do so to refresh your mind and enable you to give accurate answers.

—813—

(A package was handed to the witness.)

By Mr. Bernays:

Q. Now, when you were with Stentor, back around 1914, what can you remember that Stentor was manufacturing and selling commercially which involved the use of either the Stentor receiver or the Stentor transmitter, or both? A. A device they called a chauffeur phone.

Q. Is that what we have been calling on this trial the automobile telephone, or Autophone? A. That would be what you have been calling the auto telephone, I believe.

Q. Yes. What else, Mr. Leach? What else? A. A garage paging system, railroad dispatchers telephone

equipment, and they were just about starting on marine telegraph—marine telephone equipment.

Q. Now, were all of those devices loud speaking devices, Mr. Leach? A. Yes.

Q. And did you in the course of your employment by Stentor have anything to do with their manufacture or assembly?

—814—

A. I had some.

* * * * * * *

—815—

Q. Mr. Leach, I am going to ask you to step down here and get where the jury can look and answer questions to them, and will you try, please, to speak so that, however you face, the Court and Judge Morris can also hear you? A. I will.

(The witness left the stand.)

By Mr. Bernays:

Q. What is this which I show you, Mr. Leach? A. That is a conventional type hand set.

(Discussion off the record.)

By Mr. Bernays:

Q. A conventional type of hand set, you say; the manufacture of what company? A. Western Electric Company.

Q. It says so right on the face of it? A. It is moulded into the handle.

Q. And will you tell the Court and jury who furnished that to you, and when? A. Furnished by the counsel.

Q. Through Mr. Leahy and through me? A. Yes.

—816—

Q. Within the last few days? A. Yes.

Mr. Bernays: May I have this hand set marked as the Plaintiff's Exhibit of the next number, sir?

Mr. Mahaffy: 86.

Mr. Morris: No objection.

The Court: Admitted.

(Received in evidence and marked "Plaintiff's Exhibit No. 86.")

• • • • • • •

—820—

• • • • • • •

Q. Now, were you making head phones for use in radio reception in 1922 or subsequent years? A. We were.

Q. Those were intended to be used by being connected with the usual kind of receiving set that you had at home—— A. It could——

Q. —and listened to? A. It could be used on a commerical receiving set.

• • • • • • •

—821—

• • • • • • •

"Q. Will you tell the Court and jury, please, what differences there were between the receiver unit in those

—822—

radio receiving head phones that you speak of and the conventional type of telephone receiver that you have just finished describing and explaining?")

By Mr. Bernays:

Q. You understand I am not holding you to an exact detail of finish or construction,—— A. No, no.

Q. —or that sort of thing. A. The only change, to use this receiver on a radio amplifier, would be to take this copper wire off and rewind it with a smaller copper wire

and build a resistance in your piece, in these two coils (indicating). In other words, this particular one, it isn't marked with a resistance, but I imagine it is somewhere around 70 ohms. With a radio, to change it into a radio receiver, you would increase the resistance to about a thousand ohms, roughly.

And, also, there would be a slight change, between the air gap of the pole piece. Otherwise it is exactly the same.

Q. Now, would what you have said of the adaptability of the conventional type of telephone receiver for use as

—823—

a head set in connection with a radio receiving set also be true with respect to the use of the receiver in connection with a horn loud-speaker? A. It could be done.

Q. Was that the customary way of doing it back in 1922 and thereabouts? A. It was.

Q. And you understand that when I refer to the horn type of loud-speaker, radio loud-speaker, I am referring substantially to the sort of thing which we have here, which has been marked Plaintiff's Exhibit 73 and 73-A, and another part of it, 73-B? A. Yes.

Q. Is that right? A. That is right.

Q. Now, when the receiver unit—you better stand over here for a while, because you will do a lot of traveling—when the receiver unit, the telephone receiver unit, was being adapted for use in connection with radio reception was there a type of receiver unit in which there was a diaphragm larger than the diaphragm in the conventional unit, or thicker? A. There was a larger diaphragm.

—824—

Q. A larger diaphragm, and in that case was there any difference in the size or strength of the permanent magnet in the unit? A. In some cases.

Q. Was it also, however, customary to use the radio—the conventional telephone receiver adapted as you have described without any change in diaphragm size or magnet strength, in connection with radio reception? A. It is—it was done.

Q. It was done? It was done both ways? A. Both ways.

Q. Both in head sets and in loud-speakers? A. Correct.

* * * * * * *

—829—

* * * * * * *

"Q. I show you, Mr. Leach, what has heretofore been

—830—

marked Plaintiff's Critchfield Exhibit 14, and ask you if you recognize as to general type what kind of housing or casing that is.") A. It is a Stentor housing. It is a die casting.

By Mr. Bernays:

Q. Is it a Stentor housing of the Stentor receiver as you were familiar with it when your company were making those parts for Stentor? A. It is very similar.

Q. Now, will you explain—withdrawn. Plaintiff's Exhibit 87 in your hands now is, without the diaphragm or the diaphragm mounting, apparently, the same as Plaintiff's Exhibit 75-A, is it not? A. It is apparently the same.

Q. Now, will you explain to the Court and jury what it is that is done to Plaintiff's Exhibit 87, the empty housing that you have in your hands, and from the die casting as it comes out, in order to prepare it to receive the diaphragm, and how the diaphragm is then set in? Do I make my question clear? A. The die casting is a metal casting which is cast under pressure. The surfaces come out fairly smooth, at least, today they come out very

—831—

smooth. When this was die cast they hadn't perfected it quite so much, so they had to be machined to put this, the thread, in here, also to face the bottom of the case and

recess it for the rubber ring and conventional drilling and tapping.

Q. Now, when you got it threaded and recessed for the rubber ring what did you do to make it a part of the diaphragm assembly or receiver cap, or whatever you wish to call it, of the Stentor receiver? A. In this recess there is inserted a rubber tube which is cut to very accurate length, so that it does not overlap, and at the same time the two edges do touch. That is inserted in this half-round recess.

The diaphragm is then placed on top of the rubber, and there is another rubber ring that is put in on top of the diaphragm, which is also cut carefully so it does not overlap and still touches.

Then there is a brass clamping ring that is threaded in with a spanner wrench until the clamping ring touches the rubber ring. To determine how tight that clamping ring should be clamped to the rubber the girl runs the ring down with a wrench, and when she feels it hit the

—832—

rubber ring she tries the diaphragm by one finger through the aperture here, and the other finger back——

Q. Will you hold it so that the jury are seeing it? A. —and tries to move the diaphragm, not up and down, but sideways. She tightens the clamping ring until there is just a slight movement of the diaphragm sideways.

• • • • • • •

—834—

• • • • • • •

Q. Now, Mr. Leach, you have explained heretofore what is to be done to the conventional type of telephone receiver, such as the Western Electric type, to make it adaptable for use as a radio head telephone for radio reception, or as part of a radio loud-speaker such as Plaintiff's Exhibit 73. Do you know what is to be done to the

Stentor receiver of which 75-A has been used by you as an illustration in order to adapt that for similar uses? A. The only change would be the change in the copper wire, as I explained before, increasing the resistance, and also an adjustment to the case against the diaphragm, change the air gap.

Q. Well, now, in the conventional type of receiver you say that the adjustment of the air gap, that is worked by

—835—

grinding the shoe pole? A. That is right.

Q. Or the—— A. Pole shoe.

Q. Pole shoe, or the pole piece; and how is it done in the Stentor receiver? Does the pole piece there have to be ground? A. The pole piece is ground, but at no particular set distance or relation.

Q. And the matter is one of—— A. That adjustment is taken up by the threaded portion screwing into the cap and being locked with the lock screw.

Q. Now, with those modifications is the Stentor receiver adaptable for use as a head telephone for radio reception? A. It would be by changing the resistance, the coil, and also the case.

Q. Yes, I had in mind including those modifications. By doing——

By the Court:

Q. Will you repeat that, please? A. Pardon?

—836—

Q. Those changes to convert it into a loud-speaker are what? A. By changing the resistance or winding of the pole pieces and the outer case.

By Mr. Bernays:

Q. You mean the adjustment? A. The shape of the outer case would naturally have to be changed to put on here.

The Court: Perhaps I understand.

By Mr. Bernays:

Q. And would those same changes and adaptations also adapt the Stentor receiver for use as the receiver unit in a radio loud-speaker like Plaintiff's Exhibit 73? A. The change there would be the same, the resistance and also adjusting.

Q. Would there have to be some purely mechanical machine change to put it in connection or in relationship to —what do you call this, a collar (indicating) A. Ferrule.

Q. A what? A. Ferrule.

Q. Ferrule, call it your own—— A. It would.

—837—

Q. Would it? A. There would have to be a machine operation to adapt the ferrule.

Q. But that is purely a mechanical operation? A. That is all.

• • • • • • •

—844—

• • • • • • •

Q. Now, you mentioned a while ago, Mr. Leach, a Bristol Company. Is that a company with which your Electrical Industries Manufacturing Company has dealt? A.

—845—

We have dealt with them.

Q. Is that company still in existence? A. It is.

Q. Did Electrical Industries Manufacturing Company ever manufacture either—receivers either for radio head phones or for radio loud-speakers for the Bristol Company? A. We did.

Q. Do you remember whether that type of business was the first that you ever did with the Bristol Company? A. It was.

Q. Were you familiar generally with markets and activities in radio head telephones and radio loud-speakers beginning with whenever they first came in, in the 1920s? A. I was.

Q. When would you say that radio head telephones—that is to say, head telephones for receiving over an ordinary radio, over an ordinary radio receiving set—became commercial on a substantial scale in the United States? A. That is a very hard question to answer.

—846—

Q. Well, when would be your first knowledge of the fact that they were? Perhaps that would be easier to answer. A. I don't believe I could answer that question.

Q. Well, do you know whether they were already commercial in 1922? A. They were.

Q. 1923? A. They were.

Q. And thereafter? A. Yes.

Q. Do you know, and if so, will you tell us what was the market situation in respect of demand and supply in the United States as to these receiver units for use in radio in the years 1922 and thereafter? Was demand in excess of supply, or was supply in excess of demand? A. In 1922 the demand was greater than the supply.

Q. What about 1923? A. Well, slightly.

Q. What about the subsequent years, if you remember and know. A. Well, there was always quite a demand for radio units, loud-speaker units and head sets. The great-

—847—

est demand, of course, was in '22 and '23.

* * * * * * *

Q. Are head telephones for—are head telephones for radio reception over ordinary radio receiving sets still being made and sold? A. They still use head sets on radios, yes.

Q. Now, a question was put to you a while ago with respect—at Judge Morris's suggestion—with respect to the date of the experiment on these Music Master loudspeakers, and you gave the date of that experiment as being to the best of your recollection 1922 or thereabouts. You have heretofore discussed that experiment in connection with preparing for the trial of this case? A. Yes.

Q. Have you discussed—did you discuss it with Mr. Spreen when he called upon you? A. He asked me several questions.

—848—

Q. And has there been discussion with Mr. Spreen since then, since your arrival here in Wilmington to testify about that? A. No.

Q. Will you try to remember, please, to think, please, whether 1922, which was the date that you gave a while ago, is the date that you have heretofore given us as the time of that test, and if not, what date it has heretofore been your recollection that the test occurred? When I say "date" I mean year, of course. A. Why, I think I am a little confused on the date.

Mr. Morris: I didn't get that answer.
The Court: "I am a little confused on the date".
The Witness: I am a little confused on the date.

By Mr. Bernays:

Q. You mean that you are a little confused now when I ask you, or that you were a little confused a moment ago when you gave your answer? A. I am afraid I am a little confused now.

—849—

Q. And that is the best that you are able to do as to the date at this time? A. Yes.

Q. Let me ask you this, how many—on how many occasions did you at the Electrical Industries Manufacturing

Company substitute a Stentor receiver for the receiver in the Music Master loud-speaker and compare the two instruments for performance? A. Why, there was two series of tests.

Q. Being the two that you told us about a while ago. A. No, two independent tests.

Q. How long apart—excuse me, had you finished? I didn't mean to interrupt you. A. In other words, there was two projects, you might say, two projects of test, of two different types.

Q. Go ahead. A. The horn type, and then later we tried it in what we—I call a box type.

Q. I see. Do you remember how far apart those two tests were? A. Within two to three weeks.

—850—

Q. So that whatever tests were made would have been within a period of two or three weeks? A. Correct.

• • • • • • •

Q. In that one of those tests in which you modified a Music Master horn loud-speaker as you have described, that was the only occasion in which you did that? A. The time we changed the horn type, yes.

Q. You did that only once? A. Once.

Q. I see.

Mr. Bernays: May I have just one moment?

By Mr. Bernays:

Q. Let me inquire of you, Mr. Leach, do you remember when what you have called the box type of loud-speaker was first used here in the United States commercially? A. '24.

Q. '24, and you say that in one— A. About that.

Q. I beg your pardon? A. All right.

—851—

Q. And you say that in one of these tests, which was within two or three weeks of the other, you used a box type of loud-speaker? A. Correct.

Q. Does that circumstance of the time when the box type of speaker came on the market in any respect help you to fix the year in which these tests were made? A. Well, to my knowledge it was '24.

Q. Or, at any rate, not before? A. Not before.

• • • • • • •

—855—

• • • • • • •

Cross examination by Mr. Morris:

Q. You went with the Stentor Company what time in 1914? A. Why, the exact month I couldn't say. It would be early summer.

Q. Did you make any tests of any instruments during the first year that you were with the Stentor? A. I was only with Stentor nine months.

Q. Did you make any tests of Stentor instruments during the nine months that you were with them? A. I did.

Q. Was that in 1914, or 1915, or '16? A. That would

—856—

be late '14 and part of '15.

Q. How did the diaphragm in weight of the Stentor unit compare with the then standard receiver diaphragm? A. Why, I don't believe I ever weighed any.

Q. How did it compare in thickness? A. In thickness, the conventional type diaphragm that we were using on our units, or the average unit, was approximately between eleven to thirteen thousandths. On the Stentor unit it ran between eighteen to twenty.

Q. Was the Stentor unit diaphragm—you are talking about a receiver— A. Diaphragm.

Q. —diaphragm, now? Was the Stentor diaphragm more or less rigid? A. The Stentor diaphragm itself was more rigid than the conventional type diaphragm.

Q. And when did you measure the Stentor, the thickness of the Stentor receiver diaphragm? A. At various times.

• • • • • • •

—865—

Q. So that whatever date it was, it was at least approximately fifteen years ago that you are testifying about? A. Approximately.

Q. Now, then, can you tell me that your recollection with regard to each test that you made fifteen years or more ago is clear, or do you have to draw upon your imagination in order to arrive at a result? A. Why, I don't have to draw on my imagination because we were supplying Klaxon with units. We naturally thought that if the Music Master deal did go over, why, we would receive the benefit by increased shells, so a thing of that type sort of remains in your mind.

Q. So did you ever make any other tests than these two about which you spoke? A. That is all that I did.

Q. That is all that you recall? A. That is all that I recall.

Q. Maybe you have made others? A. On other units.

Q. On other Stentor units? A. Not with Stentor units.

—866—

Q. When did you make this other Stentor unit tests. A. Within a period of about three weeks of the original one.

Q. What was the box—what did you call it? A. Box type speaker.

Q. Box type loud-speaker. A. Why, a box type loud-speaker had the conventional type horn but was enclosed in a mahogany or other type of wood box, with a grille.

Q. Oh, you mean— A. Similar to your radio today.

Q. Oh, very well. Now, did you do the manufacturing for the Stentor Electric prior to 1917 or prior to 1918? A. We did.

Q. Did you do all of it? A. Not all of it.

Q. Did you do the assembling? A. No.

Q. The assembling was done entirely by Stentor. A. We did the sub-assembly and they did their final assembly.

—867—

Q. And the sub-assembly consisted of what? A. Why, for instance, the magnetic end we supplied, screwed, ground and finished in the case. The housing, we machined and fitted the clamping ring.

Q. And what? A. Fitted the clamping ring.

Q. Oh, fitted the clamping ring. Did you put the rubber rings, the diaphragm and the clamping ring in the receiver, or was that done by Mr. Spence, or by Stentor? A. That was done originally by us, and later by Stentor.

Q. When you say "originally by us" you are covering now what period? A. That takes—when that type was originally built.

Q. When you built them did you have the rubber rings resting lightly upon the diaphragm or did you put them under compression? A. We had the rubber rings slightly under oppression.

Q. Under oppression? A. Yes.

—868—

Q. How about compression? A. No, oppression.

Q. Let's go to the receiver now just for a moment—let's not.

I wonder what you meant by slightly under oppression, and I don't care whether you change that word "oppression" to "compression," you are using "oppression" where I would use "compression," and maybe in a moment you will concede that I am right, but let's forget the difference, if it amounts to nothing, if we mean the same thing. A. Why, slight pressure would—

Henry George Leach—for Plaintiff—Cross

Q. I wonder what "slight pressure" means to you, because it might mean one thing to me and it might mean a different thing to you, so won't you be good enough to tell me what you mean by "slight"? A. The least amount of power or force required to hold a thing in position without it being able to wiggle around.

Q. Featherweight or heavyweight? A. Well, what would be the definition of "featherweight" and "heavy-

—869—

weight"?

Q. Well, indeed, I don't know. Let me try it again. When these sets were assembled—and I will speak now of the receiver—was there any compression of either tube when they were assembled? A. There would be a slight.

Q. A slight. Now, tell me how slight and how great, and how the stopping point would be determined in the Stentor receiver, and was determined. A. I believe I illustrated before the way that the pressure was determined on the diaphragm. I believe you have it there.

Q. I don't want you to work on this one. As I understood you, if a girl could take her thumb and finger that way (indicating) and push it, wiggle it around a little bit horizontally— A. Slightly move it.

Q. Slightly move it, with the strength that a girl could put on it, it would be considered under light pressure? A. With no great effort.

Q. With no great effort? A. On her part.

—870—

Q. And it was compressed until that could be done? A. Correct.

Q. Then the—what did you call this? A. Receiver shell.

Q. Then the receiver shell was screwed in? A. That is right.

Q. And that had a permanent magnet on it? A. Correct.

• • • • • • •

—883—

* * * * * * *

Redirect examination by Mr. Bernays:

Q. Would you be good enough, Mr. Leach, to separate

—884—

the shell case and the receiver housing of Exhibit 75 A for me?

(Witness does so.)

A. Yes, sir.

Q. You can hold on to it and stay there. I just want to ask you some questions about it. You told us, if I remember correctly, that that particular receiver unit was not put together by Electrical Industries Manufacturing Company for Stentor? A. That is correct.

Q. It is part of the telephone, marine telephone, which is Exhibit 75 B, a Klaxon Stentor product? A. Yes.

Q. Now, directing your attention to the brass clamping ring which is in the housing over the outer rubber ring—do you see what I am referring to? A. Yes.

Q. —how was that used, how was that used in the adjustment of the instrument when you were assembling and adjusting them? A. Well, clamping ring is used to bring a slight pressure on the rubber, to hold the diaphragm——

—885—

Q. Will you keep your voice up? A. Clamping ring is used to bring a slight pressure on the rubber to hold the diaphragm in position.

Q. After the clamping ring is in and adjusted as you have described can the screwing in of the shell case which I hold in my hand, into the housing in which the clamping ring occurs, affect the adjustment by way of adding pressure to the rubber tubing? A. Well, due to the distance or measurement of the shell, the shell couldn't change with the clamping ring adjustment, because both of them are

threaded, and even if they did meet one would tend to lock the other. In that way neither could move.

Mr. Morris: I can't hear you.

The Witness: In that way neither would move.

* * * * * * *

—888—

* * * * * * *

Q. Now, you were asked on your cross-examination whether you had heard certain of the Stentor devices which you particularly mentioned in actual operation, and among others my notes show you mentioned the marine telephone. Was your company at any time manufacturing a telephone for installation on board ships? A. It was.

Q. What is the name of the company for which you were manufacturing, or the name by which the telephone

—889—

was sold? A. The telephone, battle telephone, was known as the Coryphone.

Q. Was that for use on Naval vessels? A. It was.

Q. Now, casting your mind back——

The Court: What was the name of it?

Mr. Bernays: Corey, C-o-r-e-y, I think is the spelling, sir.

By Mr. Bernays:

Q. Is that correct spelling, Mr. Leach? A. That is correct.

Q. About when did you begin manufacturing that battle telephone, that Cory telephone? Do you want to look at your sales sheets? A. If I could.

Q. Yes, of course, that is what they are here for.

I will pass by that question until the sales sheets are found and then you can look it up, but in the meantime let

me ask you this. I want you to cast your mind back to the times of which we are speaking, say the early 1920s, and make a comparison as of that time, not as of today, but as

—890—

at that time, between the respective performances, let us say, of the Stentor marine telephone and the Cory telephone. Will you tell us, please, what your answer would be to that? A. Well, the Stentor marine telephone spoke up favorable in comparison with the Coryphone, or the marine type phones we had at that time.

Q. Now, a Cory telephone was a telephone that you were manufacturing for the customer, to the customer's specifications? A. To Cory's specifications.

Q. It wasn't anything that you were yourselves manufacturing for sale to the Government? A. No.

Q. Now, you have also told us that you heard the Stentor paging system in actual operation. Will you tell us again, keeping your comparison to comparable periods, will you tell us how the Stentor paging system compared in performance with such other paging systems as you then heard? A. Compared favorable with the type systems that were in operation at that time.

—891—

Q. What about the railroad, the train dispatching system for use on railroads. A. That compared favorable, too.

Q. Was the Cory telephone a clamped receiver, a clamped diaphragm receiver, or was it a different type of receiver? A. It was a clamped type diaphragm, much larger in diameter than the conventional type receiver.

Q. Now, you remember you were telling us about the comparative tests that were made between the Music Master radio loud-speaker, with its own receiver unit, and the Music Master radio loud-speaker with the Stentor receiving unit, Mr. Leach? A. Yes.

Q. In the years, let us say, from 1922 on did you in the course of the operation of your business keep track of and keep in touch with the performance of the types of radio loud-speakers or some of them then on the market? A. In our test room we had every, practically every make unit that was manufactured at that time.

—892—

Q. Would you mention, please, some of those which you did have? A. I jotted down a small list of them. Could I use that list?

Q. You may use that list, sir. A. Atwater Kent, Bristol, Brandeis, Connecticut Instrument, Music Master, R.C.A., and Sonora, and Western Electric.

Q. Now, for which of those that you have named was your company itself manufacturing the receiver unit to specification? A. Bristol unit.

Q. Now, again directing your mind to that period of the art, let's say 1922 and '3 and '4, and making your comparison on the comparable basis of the respective instruments of that period, what would you say as to the respective efficiencies in performance of the Stentor unit used in a radio loud-speaker and these other radio loud-speakers that you have mentioned? A. Well, on actual demonstration to any outsiders we only made the two tests, between the horn type and the box type Music Master.

—893—

Q. Well, I was directing my question to your own judgment and your own recollection, Mr. Leach. A. Why, the Stentor unit that we had compared very favorable.

Q. With these others? A. With the other units.

Q. I show you a writing and ask you if you recognize it as a sales record of your company as of the time of the dates that it bears? A. I do.

Q. That was a record regularly kept in the course of the conduct of the business of your company? A. It is.

Q. And has been preserved since that time? A. It has.

Q. Will you be good enough to look at page 129 and see whether the entry to which I direct your attention with my finger has any reference to the Cory Company that you mentioned a while ago? A. It has.

Q. Is that the same company? A. That is the same company.

—894—

Q. And was it for them that you were manufacturing the battle telephone? A. Yes.

Mr. Bernays: May I correct the record, sir? I said that it should be spelled C-o-r-e-y. I see by looking at that register that it should be spelled C-o-r-y.

By Mr. Bernays:

Q. Now, what is the date of that entry? A. 1-18-18.

Q. 1918? A. 1918.

Q. And you continued manufacturing the Cory battle telephone for the Cory people after that date? A. We did.

Q. Without troubling to go through all these registers here, just give us your best recollection of how long you were manufacturing that telephone for them. A. According to this sales record it continued right through to the end of the year.

Q. And according to your recollection did it——

—895—

By the Court:

Q. What year? A. 1918.

Mr. Bernays: 1918, I understood he was referring to the same year.

Henry George Leach—for Plaintiff—Recross

By Mr. Bernays:

Q. According to your recollection—well, let me show you a register and inquire whether that is a continuation of the same kind of record of your company for 1919. A. It is.

Q. Do you find the Cory people listed among your customers for that year? A. The last entry seems to be fourth month, twenty-fifth day, 1919.

Q. That is the last entry you can find in that register? A. Yes.

Q. Do you remember whether you manufactured in years subsequently, or don't you? A. No, that was a contract.

Q. Oh, I see.

—896—

A. Of so many telephones.

Q. So you would say that that was the end of the—— A. That would be the end of the contract.

* * * * * * *

Recross examination by Mr. Morris:

Q. You have Plaintiff's Exhibit 75A in your hands or on your shelf? A. Yes, sir.

Q. Was that the first type of receiver that was manufactured by the Stentor Manufacturing Company? A. May I have that question again, please?

(The question was repeated by the Reporter, as follows:

"Q. Was that the first type of receiver that was manufactured by the Stentor Manufacturing Company?")

A. I don't believe I can answer that.

By Mr. Morris:

Q. Why not? A. I wasn't connected with Stentor at that time.

—897—

Q. Oh, you became connected with Stentor at what time? A. 1914, late.

Q. All right, let's begin in 1914. Was that the type of a receiver that was being manufactured by Stentor in 1914 when you joined the forces of that company? A It was.

Q. Did you see or observe any other types of receiver about the place when you entered its employ? A. In production or test?

Q. Your words were "introduction or test"? A. Production or test?

Q. Production. A. No.

Q. From the time you joined the company in 1914 until, we will say, 1930, '31, if you want, was that the type of receiver that was designed and produced so far as you know by the Stentor Company and/or the Klaxon Company? A. My connections with Stentor, of course, were nine months, and during that period that is what they

—898—

manufactured. Later on, of course, I did know that they were still manufacturing.

Q. What are the advantages of that construction that you have in your hands as against another construction, and I will be specific and ask you what are the advantages of that construction over the construction shown in figure 1 of the patent for the receiver.

Mr. Bernays: May I have that last portion of the question? It wasn't clear to me.

(A portion of the question was repeated by the reporter, as follows:

"Q. * * * and I will be specific and ask you what are the advantages of that construction over the

construction shown in figure 1 of the patent for the receiver.")

Mr. Morris: May I pass this patent which is in evidence to the jury, so that they may follow?

The Court: Have we an answer?

Mr. Morris: I think not. I am asking the witness to compare the design that he has in his hand with figure 1 of patent 1,112,392.

—899—

A. Without taking it apart, this compares with the patent in reference.

By Mr. Morris:

Q. It does compare? A. Yes.

Q. Yes. What do you mean by that answer? A. Comparison of mechanical construction. That is, in physical shape it is not exactly the same. The component parts in this figure show the component parts in this Exhibit 75 A.

Q. You have nothing further to say about how it compares? A. In this type of a diaphragm suspension it gives a freer moving diaphragm.

Q. That is, in the Exhibit 75 A which you have in your hand it gives a freer moving diaphragm than would one designed according to the figure 1 of the drawings of the patent 1,112,392? A. No.

Q. Well, what do you mean by your answer, then, please? A. Comparison to the clamped type diaphragm.

* * * * * * *

—933—

* * * * * * *

Q. I am now going to speak about the instrument of the Stentor patent 1,112,392, and 1,112,167, being, respectively, the patents for the Spence patents or Stentor

patent for receivers and the Stentor patent for transmitters, and I am going to assume instruments made, a set made under and in accordance with those patents, in the best way that they could be made under the teachings of the patents, and if I have understood your testimony in direct aright you expressed the view that such an instrument ranked rather highly? A. The mounting of a diaphragm between the two rubber rings I regarded very highly.

Q. In place of what? A. The clamped seat, tight diaphragm.

Q. You mean you regard the rubber rings highly in.

—934—

contrast with no rubber rings, or in contrast with rubber gaskets or brass clamping rings, or what? I just don't understand. A. I am making a comparison between the Spence type rubber mounting and the conventional type receiver, which has, generally, metal surfaces against the diaphragm.

• • • • • • •

—939—

• • • • • • •

Q. Do you know any other sets that were called loud speaking sets that were on the market at about that time, say '17, '16, '17, '18, '19 and on? A. Pardon me; Western Electric had it.

Q. Was one called Callophone, or something like that? A. I believe there was.

Q. Were you familiar with that one? A. Only on general working, yes.

Q. Would you say that the Stentor was as good as, better than or worse than Callophone? A. About par.

Q. One was about as good as the other? A. About as good as one another.

• • • • • • •

Henry George Leach—for Plaintiff—Redirect

—940—

* * * * * * *

Redirect examination by Mr. Bernays:

* * * * * * *

—941—

Q. Mr. Leach, you were asked a number of questions on Judge Morris's last examination as to the method of securing the rubber rings and the diaphragm in the Spence receiver which is set forth in figure 1 of patent 1,112,392. A. I was.

Q. Now, that method, as I understand it, was to secure the rubber rings and the diaphragm by screwing the two members together without the intervention of a brass clamping ring, is that correct? A. That is correct.

Q. What was the purpose of re-designing so as to introduce the member that I have referred to as the brass clamping ring? A. Two reasons; one reason, for assembly, facilitated assembly of the unit, and also to take up any small amount of unevenness of the tube by the fact this clamping ring when it is threaded is of a much smaller thread diameter than the thread case. Therefore, if it hits any unevenness it has a tendency to tilt to take care of that unevenness.

Q. To accommodate itself, Mr. Leach?

—942—

A. To accommodate itself.

Q. Did you find that the introduction of the brass clamping ring provided you with a manufacturing method which enabled, which made it possible to solve the difficulties about which Judge Morris was inquiring? A. It did.

Q. At a reasonable manufacturing cost? A. At a reasonable manufacturing cost.

Q. Which is the less costly to manufacture, Mr. Leach, the method of assemblage which is apparent in Exhibit 75 A, or the method of assembly which appears on figure

1 of the patent? A. As I quoted before, figure 1 of the patent would cost slightly more than Exhibit 75 A.

Q. Now, I will ask you to look, Mr. Leach, at certain of these exhibits which have been put in by Judge Morris this morning. Will you look, first, at Defendant's Exhibit 7, being the letter of June 1, 1916, from the Commandant to the Navy Department via the Commander of the Air Service. Is that the one you have on top? A. 6?

—943—

Q. Don't pay any attention to that number? A. Oh.

Q. These are different numbers. A. Oh.

Q. These are photostats of the same thing; yes, that is the same one. A. June 1st, 1916.

Q. Will you tell the Court and jury, please, of what device this report, from your readings, sets forth a test.

(The witness examined Defendant's Exhibit No. 7.)

A. This letter apparently refers to what we know, used to know, as the throat transmitter telephone equipment.

By Mr. Bernays:

Q. Will you tell the Court and jury, please, what a throat transmitter telephone apparatus was? A. It consisted of a transmitter or microphone that was used a little different than the conventional type microphone or transmitter; that is, instead of speaking into the transmitter, the throat transmitter was put on a—larynx?

—944—

Q. Larynx, correct. A. And due to a weighted diaphragm, picked up the vibrations from the throat, and in turn was fed to a head set.

Q. And as you read this exhibit, that is the device of which this report is a test. A. Yes.

• • • • • • •

Q. By the way, do you know who was the patentee of the throat transmitter? A. Electrical Industries Manufacturing Company.

—945—

Q. Your own company? A. Yes, sir.

* * * * * * *

—946—

* * * * * * *

Deposition of R. M. CRITCHFIELD, witness for plaintiff.

Direct examination by Mr. Bernays:

* * * * * * *

—950—

"A. Yes—Mr. L. O. Parker.

"Q. Is he still here? A. Yes.

"Q. How long was Mr. L. O. Parker responsible for the Stentor engineering? A. From the time it was moved out here until the fall of 1926, I believe.

"Q. And then in the fall of 1926 you took over the engineering aspects of the Stentor operation as well as the engineering aspects of the Klaxon operation? A. That is correct."

* * * * * * *

—954—

* * * * * * *

"Q. Would you describe briefly upon the record the workings of the Stentor Autophone receiver when the entire receiver is correctly assembled and adjusted as you suggested a moment ago that it of course would have to be? A. The receiver of course is connected in the circuit with the source of energy, and in the circuit with the transmitter, and when the transmitter is spoken

into there are electrical impulses represented by changes in the current flowing in the circuit to which the coil windings in the receiver unit are connected. The variations in the electrical current flowing through the coil windings cause variations in the ampere turns generated by the current flowing through the coil windings. This variation in ampere turns results in a variation of the attraction of that part of the pole pieces adjacent to

—955—

the diaphragm with the diaphragm, with the result that the diaphragm is caused to move to and fro, toward and away from the pole pieces, corresponding to the variations of the current in the circuit.

"Q. And is it that energy and that motion to and fro of the diaphragm in the receiver which gives you the voice reproduction through the receiver? A. That is correct, the diaphragm moving to and fro with the horn connected sets up a vibrating air column in the receiver horn which reproduces the voice.

"Q. And would you say in respect of the receiver, as I think you said in respect of the transmitter, that there is an advantage in the voice communication and reproduction from having the diaphragm not rigidly fixed at its periphery so it can move back and forth in a plane? A. Yes, I think there would be if it could be accomplished without any other disadvantages.

"Q. And was the objective of the particular structure

—956—

of the Stentor Autophone receiver as manufactured here at Remy to provide a receiver in which the diaphragm would have such motion or mobility? A. The object was to so construct the receiver so it would operate the most efficiently.

"Q. As a matter of engineering, it would be a simple matter enough, would it not, to clamp down the diaphragm

in a receiver so that the diaphragm was so fastened at the periphery as to be substantially immovable? A. Yes.

"Q. Did you try to achieve that result here at Remy when you were manufacturing the Stentor Autophone? A. No.

"Q. Did you try to achieve the result when you were manufacturing the Stentor Autophone here at Remy of having the diaphragm so set in the receiver that the diaphragm as an entirety would have mobility? A. No.

—957—

"Q. What was the purpose—— A. (Interposing.) Maybe that is not just right. I guess the answer there should be, 'yes'.

"Q. Now, taking the Stentor Autophone receiver as a whole, is it not the fact that in its fundamental principles and construction it was of the type of mechanism which was at the times in question being used as the receiver on the ordinary commercial telephone? A. Except for the use of the rubber air cushion, and except for the question as to whether or not a permanent magnet was used, yes.

"Q. The ordinary commercial telephone did have a permanent magnet, did it not? A. The ones that I was familiar with did have.

"Q. But in the ordinary commercial telephone the diaphragm was fixed at the periphery so as to be made as nearly as possible immovable, was it not? A. I like the term used awhile ago, 'substantially immovable'.

—958—

"Q. I will be glad to use the term. That states exactly what I have in mind. And that was the exact point of difference in that respect between the ordinary commercial telephone receiver and the Stentor receiver, was it not? A. That is correct.

"Q. Now, I think you told us yesterday, Mr. Critchfield, with respect to the transmitter that if you succeeded

in getting in the transmitter what I shall refer to in brief terms as a movable diaphragm, you would get less distortion of the voice and better production of the voice than would be the case with a transmitter in which a fixed diaphragm was used. Do I correctly recollect your testimony of yesterday in that respect? A. That is on the basis of all other things being equal?"

"Q. * * * Let us limit ourselves to the receiver for

—959—

the moment. The same receiver which is used over a telephonic system can also be employed for the reception of sound which originate on a wireless system, can it not? A. That is correct.

"Q. And also for the reception of sound which originates over a radio system? A. That is correct, yes.

"Q. Do you remember when the radio receiving system here in the United States operated on the principle of a listener using an earphone or a pair of earphones? A. Yes.

"Q. Those earphones were for all practical purposes telephonic receivers responding to radio as the signaling stimulus, were they not? A. That is correct.

"Q. When the receiving system for radio became a mechanism whereby the sound came out of a horn, do you remember that? A. Yes.

"Q. There again you had in substantial effect a tele-

—960—

phonic receiver with the sound reproduction being directed out through a horn? A. That is correct."

* * * * * * *

—974—

Deposition of F. C. KROEGER, witness for plaintiff.

Direct examination by Mr. Bernays:

"Q. Will you be good enough, Mr. Kroeger, to give the reporter your full name? A. Frederick C. Kroeger.

"Q. You are connected, Mr. Kroeger, with the Delco-Remy Division of General Motors Corporation? A. Yes, sir.

"Q. In what capacity? A. General Manager.

"Q. Is there a Delco-Remy Corporation? A. I do not believe so.

"Q. Then, for all practical purposes, you are the executive head of the Delco-Remy operation of the General Motors Corporation? A. Yes, sir.

"Q. How long have you been connected, either with the Remy Division, or, with the Delco-Remy Division, of the General Motors Corporation? Just tell us, in your

—975—

own way, Mr. Kroeger, when you came in and in what capacities you were connected, and bring us down to date on that. A. I started with the Remy Electric Company before they were a part of General Motors, in June, of 1913, and, originally, was connected with the engineering department. I continued with the engineering department until 1915, and then worked on complaints with our car customers. From the summer of 1917, until February, 1919, I was absent on account of the war. I returned in February, 1919, and, for a few months, I was again connected with the engineering department. And then, until December, 1922, worked in the sales department. In December, 1922, I became Chief Engineer and remained in that capacity until October, 1925. From that date, until January 1, 1929, I was factory manager. Since January

1, 1929, I have been General Manager. During that time, of course, there have been a number of corporate changes in the organization."

I turn to page 4, Judge Morris, the question opposite —976— line 14:

"Q. You remember, Mr. Kroeger, that, in 1924, the Klaxon operation was brought over here to Anderson, Indiana? A. Yes, sir.

"Q. And with it the operation of what was referred to, I think, on your records, and in your accounting system, as the Stentor division? A. Yes, sir.

"Q. When the Klaxon operation, and the Stentor operation, were brought over here to Anderson, they were located in this plant at which we are now examining; were they not? A. What do you mean by this plant?

"Q. I mean the plant which is now the Delco-Remy, at Anderson, Indiana, in the offices of which we are physically sitting and interrogating you? A. Yes, sir.

"Q. That is correct, is it not? A. Yes, sir.

"Q. And at all times that you have had the Klaxon operation, and the Stentor operation, over here, at Anderson, Indiana, they have been in this plant to which I have —977— referred? A. Yes, sir.

"Q. Let me ask this question. What did Remy, at any time, manufacture as a Stentor product? A. My recollection may not be complete, but the principal item it manufactured, at least, was what might be called an autophone. That is a device for communicating or inter-communicating in a limousine.

"Q. Can you remember any other device that was ever manufactured by Remy as a Stentor product? A. Not that I recollect."

• • • • • • •

—987—

• • • • • • •

"Q. To put the results of all this very simply, isn't this the fact, Mr. Kroeger, that the only use which was made, or which was attempted to be made, of the Stentor devices and process, about which I have been inquiring, by Remy, were uses in connection with the automobile tele-

—988—

phone? A. I would have no knowledge as to whether that was the fact.

"Q. To the best of your personal knowledge and recollection, is that the fact? A. I would still be unable to answer that with a direct 'Yes' or 'No', because I have no knowledge as to whether it is the fact.

"Q. But to the best of your knowledge? Let me put it this way, Mr. Kroeger. A. I have no personal knowledge.

"Q. Let me put it this way, Mr. Kroeger. Beginning with October, 1925, and going until December 31, 1928, you were factory manager of the Remy factory? A. Yes.

"Q. And prior to that time, from December, of 1922, to October, of 1925, you were the chief engineer in the Remy organization? A. Yes.

Q. And then, from January 1, 1929, until the present time, you were the general manager? A. Yes, sir.

—989—

"Q. Now, in all of that time, did it ever come to your notice, or attention, or knowledge, that any of these devices, other than the automobile telephone, about which I have been inquiring, were being manufactured in your organization? A. No, sir.

"Q. Or, being sold by your organization? A. Not that I recollect.

"Q. Or, being attempted to be manufactured by your organization? A. Of that I have no knowledge.

"Q. Did it ever come to your notice that there was ever such an attempt being made? A. Not that I recollect.

"Q. Did it ever come to your notice that any such devices were being attempted to be sold? A. I have no personal knowledge.

"Q. My question is, did it ever come to your notice that any such devices were being attempted to be sold? A. Not that I recollect.

—990—

"Q. Did it ever come to your knowledge that any investigation, or study, was being made of markets, or possible markets, for any such devices? A. Not that I recollect.

"Q. Did it ever come to your knowledge that any investigation, or study, was being made as to the possibility, or feasibility, or adaptability, of these Stentor devices or processes, for use in those fields? A. Not that I recollect.

"Q. Have you ever seen a record of any such thing in the organization: namely, any attempt to ascertain whether the Stentor devices and processes were adaptable, or feasible, for use in those fields? A. Not that I recollect.

"Q. Or, of the attempted manufacture of any of those devices? I am still speaking of records, you understand. A. I have no recollection.

"Q. Or, of the actual manufacture of such devices? A. I have no recollection.

—991—

"Q. Or, of the attempted sale of such devices? A. I have no recollection.

"Q. Or, of the actual sale of such devices? A. I have no recollection of that.

"Q. Or, of any market investigation with respect to such devices? A. I have no recollection.

"Q. Remy, during this time, did have a sales organization? A. Yes, sir.

"Q. It did have an experimental and research department and laboratory, did it not? A. Yes, sir.

"Q. The experimental and research department and laboratory was engaged by Remy, during this period of time, in attempting to improve devices of Remy manufacture? A. Yes, sir.

"Q. And to devise new devices within the field of Remy manufacture? A. Yes, sir.

"Q. The sales organization was trying to promote

—992—

the sales of articles of Remy manufacture, was it not? A. Yes, sir.

"Q. It was making examinations of possible markets, for the possible sale of devices of Remy manufacture? A. It undoubtedly was. I have no specific recollections.

"Q. That is what it was for, Mr. Kroeger, among other things? A. Yes, surely.

"Q. And you did have an advertising department during the years in suit, and more particularly between the first of July, 1924, and the twenty-ninth of September, 1931? A. Yes.

"Q. Remy did, during those years, and continues to do a great many millions of dollars of business a year; isn't

—993—

that so? A. Yes.

"Q. With employees running in to the thousands? A. Yes, sir, at the present time.

"Q. Generally speaking, it is an organization of the magnitude I am describing, and has been during all of the years in suit; is it not? A. Of which magnitude?

"Q. An organization which, at all times, since July 1 of 1924, has had sales, on an average, running in to many, many millions of dollars a year? A. Several millions, at least.

"Q. And has had employees running up in to the thousands? A. Several thousands, at least."

• • • • • • •

—995—

• • • • • • •

"Q. By the way, do you remember when radio reception was not by way of a loud speaker, but, by way of an ear piece, or a head set with two ear pieces on it? A. I don't know that I can recollect any date. I have a very vague recollection that there were sets operated that way, I believe.

"Q. Those were the earliest type of reception devices, were they not, in connection with radio? A. I don't really know.

"Q. Do you know what the receiving instrument that went to the ear, in connection with that type of reception, consisted of? A. Roughly, it was the same as an ordinary telephone receiver, I believe.

• • • • • • •

—999—

"Q. • • • It was a characteristic of the Stentor autophone, was it not, that it was a loud speaking device in the reproduction of the voice at the receiving end? A. Yes.

"Q. Now, with the ordinary telephone receiver, Mr. Kroeger, you know, do you not, that it has to be held to the ear in order to hear the sound? A. Yes.

"Q. And that, at any little distance from the receiver, the sound is not audible? A. If it is sufficiently far from the ear, yes, sir.

"Q. Now, the precise point of the Stentor autophone was, that the sound, as it came through the receiver, was

—1000—

audible without having any part of the mechanism of the receiver up against the ear; isn't that so? A. Approximately so.

"Q. If there is any inaccuracy in that statement, which is perfectly possible in view of my lack of knowledge on engineering subjects, will you correct the inaccuracy? A. There could be some distance that you were permitted, before you couldn't hear on the autophone. I will say it was substantially more than the telephone.

"Q. And, as a matter of fact, that precise point is called to the attention of readers upon this printed Delco-Remy instructions, which was Exhibit No. 1-30; is it not? The language to which I refer is as follows, Mr. Kroeger: 'Hold the transmitter close to the lips. If it is held in this manner, a sufficient loud signal will be transmitted, even though the passenger speaks in a low tone'. Is that right? A. Yes."

—1001—

I offer in evidence Kroeger Exhibit 1-30 referred to in the last question and answer.

Mr. Morris: May I see it? Have you got another copy of that?

Mr. Bernays: You furnished me with a photostat.

(Discussion off the record.)

Mr. Morris: No objection.

The Court: Admitted.

(Received in evidence and marked "Plaintiff's Exhibit No. 89".)

• • • • • • •

—1002—

Deposition of BARRY W. COOPER, witness for plaintiff.

Direct examination by Mr. Bernays:

"Q. Mr. Cooper, you are connected with the Delco-Remy Division of General Motors Corporation? A. I am.

"Q. Have I used the correct name of the Division, as it is now known? A. Yes.

"Q. And prior to that time you were connected, were you not, with the Remy Electric Division of General Motors Corporation? A. Yes.

—1003—

"Q. And when did you become divisional comptroller? A. I became divisional comptroller about October 1, of '25—1925.

"Q. * * * you were telling me that, in 1925, I think you said, in October, you became divisional comptroller? A. Yes, sir.

"Q. And have you continued to be divisional comptroller since that time? A. That is right.

"Q. And is that the office which you now hold in this organization?

—1004—

"A. Yes, sir."

"Q. Will you get out for us, please, your data with respect to the people employed in assembling, year by year, about which I have been asking, or have your assistant get it out? A. Now, I want to explain further that what I am going to give you is the number of people who were considered to be regular assemblers of Stentor equipment, and that when they had more work in the department than those people could handle, they would borrow additional personnel from other departments; and if it happened that, in a specific week, that there was not work enough to keep this number busy, they might be loaned to another department. There were three people designated as Stentor assemblers, in 1924, the latter part of 1924.

—1005—

"Q. Go right ahead. A. And in '25, we had four people designated as Stentor assemblers. In '26, we had

four people. In '27, we had six people. And in '28, we had six people. In '29, we had three people. And in '30, we had practically discontinued the Stentor department.

"Q. What about '31? A. The department was in a special department, in '31.

"Q. And you have no records of any assemblers in '30 or '31? A. Well, I find a record that this department's designation remained. In 1930, I find that this department did $95.00 worth of production labor. Some of these people were in the organization, and were borrowed to do that small amount of assembling. I have explained before that this does not give you a full picture of the number of people who worked on Stentor, be-

—1006—

cause the parts, as produced, would have been produced in other departments.

"Q. Or bought outside? A. Yes, or bought outside.

"Q. Mr. Steel asks me to inquire, and I am very happy to do so, whether the people that you have enumerated, year by year, as your assemblers, and as the personnel of the department, included, or did not include, the foremen? A. No, that did not include the foremen. That included only what we call workmen, definite people on production labor.

"Q. Did you have a special department foreman? A. Yes.

"Q. Who devoted all of his time, or divided it between that and other departments? A. Through the years, beginning with December, of '24, and from there continuously until the end of '28, we had the full time work of one foreman."

• • • • • • •

—1007—

* * * * * * *

Deposition of L. O. PARKER, witness for plaintiff.

Direct examination by Mr. Bernays:

"Q. Mr. Parker, you are an engineer with the Remy

—1008—

organization here at Anderson, Indiana? A. Yes."

* * * * * * *

—1012—

"Q. Do you remember, Mr. Parker, when the Klaxon and the Stentor operations were brought over here to Remy at Anderson, Indiana, in 1924? A. Yes.

"Q. What was your first knowledge of any kind or from any source that the Klaxon and the Stentor operations were coming over here to Indiana? A. In 1924 when the transaction took place of Remy taking over the product of Klaxon.

"Q. Did you have anything to do with the taking over of products? A. None whatever.

—1013—

"Q. Your first contact with the matter was after—— A. (interposing) After it was here.

"Q. Do you mean by that after the actual manufacturing was started here at Remy? A. Well, when they started manufacturing Stentor equipment.

"Q. That was your first contact with that operation? A. My first contact.

"Q. In what part of 1924, as nearly as you can now remember, did you start manufacturing Stentor equipment here at Remy? A. As close as I can remember, in November of 1924.

"Q. Now I think Mr. Critchfield has testified to us that from the first coming over of the Stentor operation here

to Remy until the fall of 1926, approximately, you were the engineer here at Remy in charge of the Stentor operation. Does that accord with your recollection? A. Yes, it does.

—1014—

"Q. After Mr. Critchfield took charge of the Stentor operation in the fall of 1926, did you continue to have anything to do with that operation or did you go on to other matters? A. I went on to other work.

"Q. So that your connection with the Stentor operation here at Remy would run from the period November, 1924, when the manufacture of Stentor equipment was started here at Remy, until sometime in the fall of 1926 when Mr. Critchfield took over from you, is that right? A. That is right.

"Q. Do you happen to remember when in 1926 Mr. Critchfield took over? A. In the fall of 1926.

"Q. Do you happen to remember in what month, was what I meant? A. I don't remember the exact month, no.

"Q. Mr. Parker, I show you two writings which have been marked Critchfield Exhibits 6-9 and 6-8, the first of them being dated January 24, 1925, and the second of them being dated January 28, 1925, and ask you please to be

—1015—

good enough to read them, because I want to ask you some questions about them."

The minutes recite that the witness read those writings as requested.

"A. Yes, I am acquainted with that. I remember those two letters.

"Q. And you have now read them, at my request? A. Yes."

May I call for the production, Judge Morris, of those two writings, Critchfield 6-9 and Critchfield 6-8?

• • • • • • •

—1016—

(The exhibit was produced).

—1017—

Mr. Bernays: I offer a writing produced by Judge Morris dated January 24, 1925, addressed to the Klaxon Company by C. A. Waldman, manager, Ordnance Department, U. S. A.

Mr. Mahaffy: 90.

(Received in evidence and marked "Plaintiff's Exhibit No. 90.")

Mr. Bernays: And I offer the answer to that writing of Remy Electric Company, addressed to the War Department, Office of the Chief of Ordnance, dated January 28th, 1925, sir.

Mr. Mahaffy: 91.

—1022—

"Q. You simply don't remember one way or the other, is that it? A. I don't remember definitely at that time. I would like to say, though, that we were not interested in production on any equipment of that kind at that time.

"Q. Did you take up the question with anybody here at Remy as to whether you were or were not interested in production of that kind of equipment? A. I probably did.

—1023—

"Q. And with whom did you take up that question, with your then general manager? A. Probably so.

"Q. Was that Mr. C. E. Wilson? A. No, that was Mr. Reuter at that time.

"Q. Mr. I. J. Reuter? A. Yes.

"Q. And thereupon you wrote this letter of January 28, 1925 to the War Department, which is Plaintiff's Exhibit 91? A. Yes."

. . . . . .

—1027—

. . . . . .

PLAINTIFF RESTS

—1030—

. . . . . .

Defendant's Testimony

. . . . . .

The Court: The real issue before the jury—it is pretty nearly time that it should be defined.

Mr. Morris: Correct. The real issue before the jury is performance on our part and that we did all that was required from a human standpoint,——

The Court: I got that.

Mr. Morris: —from a business standpoint, and from a legal standpoint. That is the keystone of our defense. The others will largely fade away.

. . . . . .

—1031—

. . . . . .

The Court: Well, now, the only special defense which you have eliminated is 12?

Mr. Morris: 12. I think 17 goes out too, 12 and 17.

. . . . . .

The Court: The first, apparently, is a general

—1032—

demurrer.

Mr. Morris: That is right.

The Court: You stand on that?

Mr. Morris: Yes, sir, because as I understand the law, and some of my associates are ready to argue that, there cannot be a valid obligation because of its vagueness and indefiniteness and uncertainty; in the language of this contract that is not a binding contract.

* * * * * * *

—1034—

* * * * * * *

Now, with that first defense, the 20th defense is but a restatement in more specific form of number one, so 1 and 20 are to be considered as a group.

* * * * * * *

—1035—

* * * * * * *

Mr. Morris: 20 is an elaboration of 1.

The Court: 1 and 20 together.

Mr. Morris: 1 and 20 together.

* * * * * * *

—1036—

PAUL M. FARMER, was called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Direct examination by Mr. Morris:

* * * * * * *

—1043—

* * * * * * *

Mr. Morris: I offer this in evidence.

Mr. Bernays: Judge Morris, do I correctly ob-

rve upon this writing that it bears the signature, imprinted signature, of Mr. Prickett?

Mr. Morris: Undoubtedly, Mr. Bernays.

Mr. Bernays: And it is not one of the writings, dge Morris, that has heretofore been exhibited us?

Mr. Morris: It is not, it is not one of the one ndred and eighty-nine. Its number is 836.

Mr. Bernays: In connection with my objection

—S.M. 1201—

ask Your Honor if you will be kind enough to k at this writing, because I am objecting on the ound that it is self-serving, that it contains upon face manifest hearsay, that it is wholly incom-tent for admission, even upon the assumption t it is a writing of that time. There is no claim t it was ever brought to our attention, and noth-g appears on the face of the writing to show t any such claim would lie, and the writing is all respects inadmissible, in all respects included the three grounds of incompetence, irrelevance d immateriality, and in the particular grounds t I have mentioned to Your Honor.

Mr. Morris: It is a document which was made the year 1919. It is a document which this wit-ss says was a report with respect to the Stentor ivities. It was not made as a self-serving docu-nt at all. It was not intended to be made as a f-serving document. It is a document which ows what the true facts were from a record de at that time.

—S.M. 1202—

The Court: It is contemporary, is it not,——

Mr. Morris: It is.

The Court: —from its date?

Mr. Bernays: The witness so states, and I do not question that, sir. Now, if Your Honor will look, for example, at the first paragraph there somebody not on the stand is being quoted, other people are being quoted throughout the writing, and I understand that there is no manner of doubt about the underlying proposition that it was a writing which was exchanged between the several members of the Klaxon organization itself, but not at any time communicated or disclosed to us, not even in connection—well, I will withdraw that last, because that is immaterial.

Mr. Morris: No, it was no more disclosed to them at that time than our books were disclosed to them.

The Court: It is a report made in due course—

Mr. Morris: That is right.

The Court: —of business?

—1044—

Mr. Morris: That is right.

The Court: Each and all of the objections are overruled and the tender is admitted. Let an exception be entered.

• • • • • • •

—1065—

Cross examination by Mr. Bernays:

• • • • • • •

—1081—

Q. But the fact is they were not? A. That is right.

Q. The point being that on Plaintiff's Exhibit 86 that diaphragm is against a solid body at its periphery, is that right? A. Is this 86?

Q. Yes. A. Yes.

Q. And comes against a solid cap, and, therefore, it

cannot do anything except flex, is that right? A. That is true.

Q. Now, when you were furnishing these marine telephones to the United States Government you did not furnish them receiver units in which the diaphragm was mounted on the principle of Plaintiff's Exhibit 86, did you? A. Some of them were, practically so, where they had metal rings.

Q. Where they had metal rings. You tried that out once, didn't you? A. No.

Q. It didn't work? A. Oh, no.

—1082—

Q. It did work? A. It would work with brass rings as well as rubber rings.

Q. Did you supply ships instruments commercially, in quantity, to the United States Government, with the diaphragm receiver—with the diaphragm in the receiver mounted otherwise than between rubber cushions? A. I believe that we did.

Q. You say you believe? A. Yes.

Q. Do you really remember? A. I recall that specifications—that the question of specifications had come up relative to what should be used, that the question was asked Mr. Spence as to what should be used, as we had used these several different ways, and I further recall that on one of the samples that Mr. Spence made up for submission to the Government that the diaphragms were mounted on metal, not rubber.

Q. Now, I am not asking about samples. My question was as to the commercial quantities.

—1083—

A. Well, presumably commercial quantities would be made in accordance with the samples.

Q. Well, you believe, you presume, but do you really remember? A. Well, I did not personally assemble them, of course.

Q. So you don't really know? A. No, not from direct contact.

Q. I see. Well, then, let's get back to this. Have you in the course of this trial—you have been here throughout most of the trial, haven't you, Mr. Farmer? A. Well, I have been here for a considerable portion of it.

Q. You have heard a great deal of the testimony? A. Quite a little.

Q. Have you in connection with this trial looked at Plaintiff's Exhibit 75 A? A. No, I have not, because this morning I just saw it.

Q. This morning was the first time? A. Yes.

—1084—

Q. You were here on the first day of the trial? A. No.

Q. Second day? A. I don't believe so, no.

Q. You were here a couple of days last week? A. Yes, two days last week.

Q. Were you here yesterday? A. Yes.

Q. And today? A. Yes.

Q. And you have never heretofore, before this morning, looked at Exhibit 75 A? A. No, I have not.

Q. Well, do you happen to know what instrument 75 A has been taken from? A. No, I do not know. It is, probably,——

Q. Do you recognize it at all? A. —a marine type. The same structure was used on the marine and the other types.

Q. You mean the marine type of telephone manufactured by Klaxon Company, is that right? A. Yes, or Stentor, the same.

—1085—

Q. Or Stentor, yes, and you recognize it? A. Yes.

Q. You see, for example, in the housing a diaphragm, and threaded into the diaphragm a brass clamping ring? A. Yes.

Q. And under the ring a section of rubber tubing? A. Yes.

Q. And you can tell from the position of the diaphragm, looking at the orifice, that there is quite certainly another section of rubber tubing on the other side, is that right? A. Yes.

Q. And that was the kind of receiver unit that you were furnishing the United States Government in connection with these ship telephone sets, wasn't it? A. Probably some of them were that way, yes.

Q. Well, look at the set itself. We needn't have any question about it. It comes off. Plaintiff's Exhibit 75 C, do you recognize that? A. Yes.

Q. What is it?

—1086—

A. That is a marine set.

Q. Manufactured by Klaxon? A. Yes.

Q. Yes. Now, let's get back to these flexing tests. Your test was this: you took a diaphragm, and you mounted it with the edge securely fixed, is that right, and you worked it until it talked? A. Yes.

Q. Right? A. Right.

Q. And that told you, of course, that the diaphragm was bending? A. That is right.

Q. Because it couldn't talk without bending—— A. That is right.

Q. —in that setting; and then you took that same diaphragm and you put it between two sections of rubber tubing? A. Yes.

Q. Is that right? A. That is right.

Q. Very lightly?

—1087—

A. Well, it didn't make much difference whether it was lightly or not.

Q. Well, you did try it sometimes—— A. Yes.

Q. —when it was very lightly? A. Yes.

Q. And in these tests didn't you tell Judge Morris you did so very lightly? A. Well, we did it both ways.

Q. All right, I am talking about the very lightly way. A. Yes.

Q. Is that clear? A. Yes.

Q. And then when on the rubber cushion setting that instrument talked you said to yourself, "It is flexing." That was your test, wasn't it? A. If it was no—if the sound volume were no different than it was when that were—were mounted solidly, you would say that it was all flexing.

Q. It was flexing? A. Otherwise it might be some translation.

—1088—

Q. Yes, so your test was to do this, you mount a diaphragm solidly, so the edge can't budge, and when it talks it is bending, is that right? A. That is right.

Q. Then you mount it very lightly between two sections of rubber tubing, and when it talks in that setting it is bending again. A. Yes.

• • • • • • •

—1131—

• • • • • • •

Q. This agreement was entered into May 20, 1918, Mr. Farmer, you remember that? A. Yes, so I understand.

Q. In September of 1918 your company were delivering marine telephone sets to the United States Government? A. I am not sure of delivery dates.

Q. Well, your company were manufacturing marine telephone sets to submit to the Government, in any event, for the purpose of getting contracts? A. They were producing models for submittal, for approval, I recall.

Q. And were submitting them?

—1132—

A. Yes.

Q. Did those instruments have excellent clearness? A. I would not say excellent.

Q. Did they have clearness? A. They were reasonably intelligible under favorable conditions.

Q. Did they have excellent sound volume? A. I would not call it excellent.

Q. What would you say? A. I would say they were intelligible under favorable conditions.

Q. Only intelligible and only clear under favorable conditions? A. Yes.

Q. But not excellent in either of those respects? A. I would not call it excellent in view of present conceptions of what is excellent.

Q. Oh, you are comparing those instruments with the sort of thing that we have today, Mr. Farmer? A. No, I would still say they were not excellent.

Q. You would still say that? A. Compared to the human voice, direct transmission.

—1133—

Q. Well, now, let's see. They were not excellent compared to what we have today, and they were not excellent compared to the direct transmission of the human voice, is that right? A. That is right.

Q. Were they excellent in their field as telephonic loud-speakers for the period of their manufacture and use, to wit, 1918? A. No, I would say they were not excellent.

Q. Mr. Farmer, I show you a writing dated September 28th, 1918, and ask you whether you recognize your signature at the end thereof. A. Yes, I do.

Q. And do you recognize that as a letter of that date which you wrote to the Navy Department? I should have said a copy—— A. Yes.

Q. —because it is a photostat. A. It is a copy.

Q. It is a copy? A. Yes.

• • • • • • •

—1135—

(Received in evidence and marked "Plaintiff's Exhibit No. 98.")

• • • • • • •

—1136—

• • • • • • •

Q. Well, then, I will not exhibit that ignorance. Were you correctly representing the fact to the Navy Department in this communication, that these instruments could be adjusted to keep the current within the limit which the Navy Department was specifying and at the same time

—1137—

give excellent clearness and sound volume? A. I would say that that was a general statement that was made.

Q. Was it true—— I am sorry. A. It relatively was perhaps true relative to what we had previously submitted.

Q. You are not sure that it was true? You say "perhaps". A. Well, I would say positively that that was a general statement that relative to what we had previously submitted it would undoubtedly rate as excellent, but if you were to take on an arbitrary scale and call it excellent, it would not be excellent——

Q. What would—— A. —on that arbitrary scale.

Q. Excuse me. What would be your arbitrary scale, Mr. Farmer? A. Well, the same sort of a scale that you would use in any arbitrary means of considering "excellent", as the very best obtainable, the very best possible; and certainly they were not the very best possible. We

—1138—

may have thought so, but they were not.

Q. Well, did you think so? A. No, I—I—as I say, rel-

atively, compared to what we had had before—— I think that as a general statement that is a fair statement.

Q. But you would qualify it by saying that the instrument was not the best possible, is that true? A. You may note that this letter was in September. It was very soon after we had started work on the Klaxon equipment.

Q. That is why I am reading it to you, Mr. Farmer. A. That equipment.

Q. Yes. A. And we knew far less about the qualifications of this equipment then than we had occasion to learn later,——

Q. Did you listen—— A. —and if——

Q. I am sorry. A. And had I written this letter, say, three or four months later I think it might be worded somewhat differently. Another——

—1139—

Q. Did you listen——

The Court: One moment.

Mr. Bernays: Excuse me. I thought your voice had dropped.

A. (Continued.) Another point that I would like to make, in the rating of loud speaking telephone equipment, is that you cannot base it wholly on sound volume and clarity. It is possible to make a loud speaking telephone equipment that for demonstration purposes will have great sound volume and reasonable clarity, but which may not be practical because of instability and unreliability. It is absolutely essential for commercial success to have stability and reliability even before you have large volume and clearness. You sometimes have to sacrifice on the one to gain the other, but you must at all hazards have reliability and stability.

By Mr. Bernays:

Q. Had you finished, sir? A. Yes.

Paul M. Farmer—for Defendant—Cross

Q. Did you before you wrote the letter to the Navy Department listen to one of these instruments? A. Undoubtedly.

—1140—

Q. And was it as a result of listening to one of these instruments that you wrote the Navy Department that it has excellent clearness and sound volume? A. Undoubtedly.

Q. How many months did you require as an engineer of listening to the instrument before you could familiarize yourself so as to make a safe statement as to whether it sounded clear to you? A. Well, I do not think there is any rule as to how many months it would take.

Q. You think that the interval between May 20, 1918 and September 28, 1918, might have been a sufficient interval to enable you to listen to that instrument and find out whether it sounded clear to your ear? A. If I were doing it steadily I would say that I should be able to in that time.

Q. Oh, you would have to listen steadily over that entire period, Mr. Farmer? A. Well, I do not think that is a thing in which you can state how long it would take to be able to rate an instrument of that sort.

—1141—

Q. Well, let me put it very briefly, Mr. Farmer. You said a moment ago that September 28, 1918 was very soon after Klaxon took over, is that right? A. That is right.

Q. My point is, you heard the instrument, is that right? A. That is right.

Q. It does not take thousands of hearings to determine whether it speaks clearly or not, does it? A. That is right.

Q. It does not take thousands of hearings to determine whether it has excellent sound volume, does it? A. It would take—or, I might better state that your conception of clearness—and volume—is—is subject to change com-

pared to other standards and compared to advance in your own standard, that it is not a thing on an absolute scale that you can measure and say, "This is so many inches, or so many pounds."

Q. It is a relative matter? A. It is a relative matter and it is a matter of individual judgment.

—1142—

Q. Yes, and your judgment—withdrawn. Now, you were functioning in the year 1918? A. Yes.

Q. You were not functioning by prevision ahead to the year 1939, which none of us could at that time foresee? A. No.

Q. You were, therefore, speaking, at that time, relatively to the then existing condition, which was a matter of technical and personal familiarity to you, isn't that so? A. That is right.

Q. And in respect to that then existing position you wrote the Navy Department that this instrument had excellent clearness and excellent sound volume, is that right? A. Let me add—yes—let me add that my idea of rating that instrument was undoubtedly affected by what I heard in other instruments, as would naturally be the case, because, as I said, these are relative values. I distinctly recall that the Callophone instrument did perform better than our instrument.

—1143—

Q. We will come to the Callophone in a moment, sir. Now, you were saying something about reliability and stability? A. Yes.

Q. I call your attention to your own memorandum——

Mr. Bernays: May I have the defendant's exhibits, Mr. Mahaffy? I haven't got the numbers marked on here.

Paul M. Farmer—for Defendant—Cross

By Mr. Bernays:

Q. I call your attention to Defendant's Exhibit number 29, Mr. Farmer, and ask you to read with me at the head of the second page. Do I read the following correctly into the record? I should have said, this is a report from you, is it not, to your department, or your department superior, dated—— A. 10-30.

Q. —October 30, 1918? A. Yes.

Q. And the subject is loud speaking telephones, and it reports a conversation that you had with Lieutenant Commander Charlton on the morning of the report, Octo-

—1144—

ber 30, 1918, is that right? A. Yes.

Q. You will have to speak up. A. Yes; sorry.

Mr. Bernays: So that the stenographer gets it. Now, I am reading from the head of the second page.

By Mr. Bernays:

Q. "I also mentioned again the advantages of our apparatus as regards simplicity in the instruments themselves—— A. That is it——

Q. —and the wiring—— A. Oh, that is the third page, Mr. Bernays.

Q. Well, on my copy—— A. That is right.

Q. —it is page 2. A. The pages were not interchanged, I am sorry. I was looking at the second——

Q. I didn't know that these pages were incorrectly arranged. "I also mentioned again the advantages of

—1145—

our apparatus as regards simplicity in the instruments themselves and the wiring, the fact that the line stations being compact could be mounted in limited space, less first cost, less cost of spares, and superior talking and

signalling performance"—superior talking and signalling performance as compared with what? A. With my conception as of that moment of what a loud speaking telephone should do.

Q. Let me—— A. It is natural that one's opinion on these matters changes. As of the moment, that was undoubtedly my opinion.

Q. It was your opinion? A. It was.

Q. And when you said to Lieutenant Commander Charlton, in an effort to make sales to the United States Navy, that this instrument was superior in talking and signalling performance, didn't you mean that it was superior to the other loud speaking telephones then available on the market?

—1146—

A. That was probably my opinion at that moment.

Q. Have you any doubt that that was what you were referring to when you said—— A. I think I was sincere——

Q. —that it was superior? A. —in saying that, yes.

Q. Now, you had by that time heard the Callophone—— A. I don't think I had heard——

Q. —hadn't you? A. I am not sure at what date I did hear the Callophone.

Q. Well, the Callophone were competitors with you for an agreement, were they not—for a contract with the United States Government, were they not? A. Yes.

Q. And the fact that there was that competition gave you considerable anxiety at about this time, did it not? A. Yes.

Q. And, in fact, that is mentioned in one of the memoranda that you have put in yesterday, if I remember correctly. Now, just let me see if I can find it. Well,

—1147—

I don't seem able to locate it; but do you remember at about this time, in October of 1918, the Callophone, among others, were competing with your company for a contract from the Government on these loud speaking telephones? A. I do.

Q. And when you wrote this, the addressee of this—when you said to Lieutenant Commander Charlton that your instrument had superior talking and signalling performance, didn't you intend to include superiority of your instrument over the Callophone, among others? A. I probably would have had that in mind, with the thought that whatever I would say in that matter he would use his own judgment about, as to his idea as to whether or not it was superior. It was a matter in which people, different people, would have different ideas. You would listen to a few instruments and you would hear one that some person would say was better, and others would be better to another.

Q. Mr. Farmer, I am not asking you to take out the unavoidable subjective element of forming judgments. Do I make myself clear?

—1148—

A. Yes.

Q. That subjective element was in the judgment which you expressed when you then expressed it, is that right? A. Yes.

Q. It was in the judgment that you expressed in your writing to the Navy that I read to you a while ago, wasn't it? A. Probably.

Q. And were those honest expressions of judgment? A. I would say so.

Q. Yes. Do you remember that at the time about which I am inquiring you were greatly concerned lest the

United States Government give a part of this contract to the Callophone Company? A. Yes.

Q. And do you remember reporting and representing that the basis on which the Government was about to do that was not on the basis of superiority of the Callophone instrument, but only because the Callophone—because the Navy Department deemed it desirable in the public interest to stimulate competition in your field. A. I do not

—1149—

recall that they specifically gave that reason, that that reason was given.

Q. My question was, or I intended it to be, as to whether you represented—you remember that you so believed and said and reported to your company. A. I may have made such a statement.

Q. Well, do you remember that at that time you felt that there was an actual injustice being done to your company by this policy of the Navy Department about which I am inquiring? A. Yes, I do recall that.

* * * * * * *

—1154—

* * * * * * *

Q. Do you remember at that time coming across an agreement a copy of which has been marked Plaintiff's Exhibit No. 14, which is between Stentor and the United States Government, and bears date February 2nd, 1918.

(A document was shown to the witness.)

—1155—

A. I do not recall the document particularly.

By Mr. Bernays:

Q. Well, let me ask you to look with me at the page of

this exhibit, which is marked on the copy "Order for supplies or services". Do you observe that? A. Yes.

Q. That is a regular governmental requisition form—A. That is right.

Q. —that was in use at that time? A. Yes.

Q. Now, you observe that the requisition is for twenty-four loud speaking telephones? A. Yes.

Q. And the requisition recites as follows, does it not:

> "The above to be of the Stentor Navy Type, Loud Speaking Telephones, and in accordance with Stentor Electric Manufacturing Company Drawing 1050. • • • "

Is that correct? A. Yes.

Q. And do you observe the sentence immediately following in this requisition:

—1156—

> "None other than the above will answer the requirements of the service."

A. I do.

• • • • • • •

—1161—

• • • • • • •

Q. I see. Now, you remember testifying yesterday that experiments were made by you to test Spence's theory? A. Yes.

Q. And that you found that in using different weights of diaphragms that the thicker the diaphragms got the weaker the sound they gave? A. Yes.

Q. And that you then came back finally to the ordinary telephone operating on flexure or bending, rather than with a piston-wise motion? A. Yes.

—1162—

Q. When did those experiments start? A. I do not recall.

Q. When did they end? A. I do not recall.

Q. When did you come to the conclusion that you would rather use, or would be compelled to use the ordinary type or ordinary principle of telephony, in which the diaphragm operates on bending rather than by a piston-wise motion? A. It was not a matter of deciding to do that. It was simply a matter of going ahead with that same principle which Spence had mistakenly or otherwise stated was not the principle of his telephone. Spence's telephone always operated on that principle.

Q. Might I suggest to you, Mr. Farmer, that my question asked for a date? My question was when you came to the conclusion that you would have to go back to the principle of the ordinary telephone, in which the diaphragm operates by bending instead of by piston-wise motion. What I want is the time when you came to that conclusion.

—1163—

A. Well, as regards the—the going back to it, there was no going back to it, only in our experiments. In the actual production there was no going back. We had always been there.

Q. When was that time? A. From the time we took over Stentor, I would say.

Q. Oh, you came to that conclusion—— A. Oh, no.

Q. —the moment you took over? A. No, we did not come to that conclusion then. We took Spence's word for what he had, originally.

Q. And then you performed experiments, Mr. Farmer? A. Yes.

Q. To test out the theory, is that right? A. That is right.

Q. In that metaphysical concept which we commonly

call "time", experiments take time, do they not? A. They do.

Q. Over what period of time did those experiments last? A. I do not recall.

Q. At what point of time, or over what period of

—1164—

time did you find as you stated yesterday in using the different weights of diaphragm that the thicker the diaphragm the weaker the sound got? A. Well, I think that you could perform those—you could demonstrate that in a very short period of time.

Q. How long did it take you? A. I do not recall how long it took us to arrive at that decision, but——

Q. A week? A. It might have been spread over a longer time than that.

Q. A month? A. Might have been spread over a longer time than that.

Q. Six months? A. I do not think it would take six months, because the records indicate that it was all over within less time than that.

Q. Then you would say that you had reached that conclusion, since the agreement was made May 20, 1918, at which time you took over, that you had reached that

—1165—

conclusion before the end of the year 1918, is that right? A. I am not sure of that, because I was involved in the engineering only after December 23, 1918.

• • • • • • •

Q. You testified yesterday, did you not, to at least one or more reports with respect to matters that you did

—1166—

not—that you had not personally acted in, but with respect to which you said that you were informed by reason of your general activities in the organization? A. Yes.

Q. Now, I am inquiring of you this morning as to one

of those matters as to which you testified yesterday, namely, these experiments with respect to diaphragms. Do I make myself clear? A. Yes.

Q. Was that a matter as to which you testified yesterday as of personal knowledge? A. I would say that my experiments with diaphragms were in the main conducted after December 24, 1918,——

Don't you—— A. —rather than before.

• • • • • • •

—1182—

Q. Mr. Farmer, will you tell us, please, about the sentence on the third page of this booklet which reads as follows:

"The patented, exclusive diaphragm of the Klaxon-Stentor Autophone makes this possible"?

Q. How many diaphragms were there in the Klaxon Stentor Autophone? A. Two in a set.

Q. One in the transmitter? A. And one in the receiver, yes.

Q. And the reference of that sentence is clearly to those diaphragms? A. Well, I presume it is. As I said before, I had nothing to do with the preparation of this, nor do not recall seeing it before.

Q. Have you any doubt that the reference is to those diaphragms? A. I do not see why it should be other than as stated.

—1183—

Q. And whose patents are referred to in that statement? A. Well, undoubtedly, Mr. Spence's patent.

Q. The two patents, one of them for transmitter and one of them for receiver? A. Yes, I believe so.

• • • • • • •

—1196—

• • • • • • •

Q. And it is a fact, is it not, that after Mr. Spence left your company confined itself to the production of

—1197—

the automobile telephone and nothing else to speak of? A. I believe that is right.

Q. Now, did you know Mr. George C. Dean? A. Yes.

Q. An attorney, a patent attorney in New York? A. That is right.

Q. He was patent counsel for the Klaxon Company, was he not? A. That is right.

Q. And you met him in connection with patent matters of the Klaxon Company? A. I did.

Q. And some of these memoranda that were marked yesterday were intended to inform Mr. Dean, among others? A. That is right.

Q. And Mr. Dean had an associate with the name Irving M. Obrieght, did he not? A. I believe that his name was in the firm name, although I do not think I ever met Mr. Obrieght.

—1198—

Q. You knew of Mr. Obrieght's connection with Mr. Dean, didn't you? A. I believe the firm name did have his name in it, yes.

Q. And you know that Mr. Dean and Mr. Obrieght were asked early in 1919 by your company to make an examination of the patent situation? A. Yes, I believe they were.

Q. And you know that you gentlemen told Mr. Dean and Mr. Obrieght at that time of the things that you are here saying now about the patents? A. Question again, please?

(The question was repeated by the Reporter, as follows:

"Q. And you know that you gentlemen told Mr. Dean and Mr. Obrieght at that time of the things that you are here saying now about the patents?")

A. Yes, we probably did.

By Mr. Bernays:

Q. And you know that you were being advised by Mr. Dean as to grounds that you could allege of infirmity in the agreement?

—1199—

A. I do not recall the answer in just those terms.

Q. Give it to me in your own terms, sir. A. I recall that Mr. Dean did make comments on the—the patent.

• • • • • • •

Q. And having been advised by Mr. Dean as you were then advised, isn't it the fact, that early in 1919 you tried to make the Stentor Company revise this agreement so as to reduce the fifty per cent of the net profits to a lower percentage? A. I have no knowledge of that.

Q. You have no knowledge, or no recollection? A. No—either.

Q. You never heard of that being spoken of among

—1200—

your associates in the company? A. Not in those terms, no.

Q. In what terms did you hear it spoken of, Mr. Farmer? A. I recall that—that there was a very unsatisfactory feeling concerning the whole arrangement.

Q. And the desire and the attempt were to get that fifty per cent of the net profits reduced to some lower figure, isn't that so? A. I had not heard of those points—of that detail of it.

Q. And your company carried on with the contract? A. Apparently, yes.

• • • • • • •

—1201—

• • • • • • •

Q. Were you using Spence's patents in manufacturing this product or were you not, sir? A. We were inasmuch as the patent stated, but in effect the patent was wrong, and we were not.

Q. I am afraid I will have to ask you to give me a little assistance in clarification, because I do not follow your answer. My question is, were you or were you not using the Spence patents in the manufacture of this product? A. We were using the Spence—we were using Spence's interpretation of Spence's patents.

Q. And adopting it? A. Pardon me?

Q. And adopting it? And adopting it.

—1202—

A. We were—we were using what Spence said was a substantially inflexible diaphragm. We were using what Spence said was an air cushion resilient mounting.

• • • • • • •

—1206—

• • • • • • •

Q. Were you in the court room when I read the following, and did you hear me read it from the deposition of Mr. Kroeger:

"Q. • • • It was a characteristic of the Stentor autophone, was it not, that it was a loud speaking device in the reproduction of the voice at the

—1207—

receiving end? A. Yes.

"Q. Now, with the ordinary telephone receiver, Mr. Kroeger, you know, do you not, that it has to

be held to the ear in order to hear the sound? A. Yes.

"Q. And that, at any little distance from the receiver, the sound is not audible? A. If it is sufficiently far from the ear, yes, sir.

"Q. Now, the precise point of the Stentor autophone was, that the sound, as it came through the receiver, was audible without having any part of the mechanism of the receiver up against the ear; isn't that so? A. Approximately so.

"Q. If there is any inaccuracy in that statement, which is perfectly possible in view of my lack of knowledge on engineering subjects, will you correct the inaccuracy? A. There could be some distance that you were permitted, before you couldn't

—1208—

hear on the autophone. I will say it was substantially more than the telephone.

"Q. And, as a matter of fact, that precise point is called to the attention of readers upon this printed Delco-Remy intructions, which was exhibit No. 1-30; is it not? The language to which I refer is as follows, Mr. Kroeger: 'Hold the transmitter close to the lips. If it is held in this manner, a sufficient loud signal will be transmitted, even though the passenger speaks in a low tone.' Is that right? A. Yes."

Do you agree with that testimony of Mr. Kroeger, or do you not? A. Yes, I think that—that is a true statement under proper conditions.

—1245—

• • • • • • •

Q. Now, as I remember it—thank you, Mr. Farmer—as I remember it, you evidenced some surprise this

—1246—

morning upon my exhibiting to you the use of an induction coil, and the comments with respect to the induction coil at page 11 of this Autophone booklet? A. Yes, I had forgotten that they did use an induction coil with that device.

Q. And a moment ago, if I remember correctly, you said that you had never worked with the Spence instruments with a circuit containing an induction coil? A. Yes, I said that, and I still believe that is correct. I do not recall working with this device, and this is the only one that I ever met that used an induction coil.

Q. And in all the engineering that you did on it you cannot recall that you used an induction coil? A. I do not think that we did any engineering on it. I think that this one device was in production quite steadily under Spence's regime, and continued.

Q. And continued without change or modification by your company? A. Not that I recall.

Q. You mean that you do not recall that there was any change or modification by your company? A. No, I

—1247—

do not recall. We were engaged most actively on the marine equipment at that time, and, as I say, the Autophone, as I recall it, was in production and continued, and we were not involved on that.

Q. And all the experiments and inspections of Spence's theory that you have told us about yesterday and today had to do with the marine telephone exclusively, is that right? A. No, not exclusively.

Q. With what other of the Spence products or applications did they have to do? A. Well, I would say that the general theory of the equipment as might be applied to a number of various uses.

Q. But you never made any such experiments or any

applications of the results of any such experiments to the automobile telephone, is that right? A. Not as a specific assembly.

Q. Well, what do you mean when you say "not as a specific assembly?" The assembly is the automobile telephone, is that right? A. Of the automobile telephone it is, yes.

—1248—

Q. The word "assembly" is used by engineers to mean the end product when it has been assembled together? A. That is right.

Q. Is that right? A. Yes.

Q. And you did not apply any of these experiments or the results of any of these experiments to the automobile telephone, did you? A. I am not sure that they were.

* * * * * * *

—1268—

* * * * * * *

Q. Now, whatever the difficulty was that you speak of, Mr. Farmer, and however it might or might not be susceptible of cure, it all turned around what the defendant's learned counsel called this problem of overloading at the transmitter, with all its consequences, isn't that so? A. I would say that accounted for a great part of the trouble.

Q. There is nothing in the receiver that would be noise-

—1269—

making, for example? A. No, but the receiver was not—was not capable of giving perfect reproduction, or the sort of reproduction that might be classed as excellent, as you mentioned, under the conditions used.

Q. Which went back, in turn, to this business of overloading and burning out and noisiness, and so on, at the transmitter? A. Well, or the general device of a receiver of that type for high grade transmission.

Q. I am talking now specifically on the matters about which I asked you and you answered specifically this morn-

ing, overloading of current. Do you remember having told His Honor and the jury that that caused burning out—— A. Yes.

Q. —noisiness, —— A. Yes.

Q. —defective transmission of speech? A. Yes.

Q. I am now speaking about those difficulties. How would those difficulties have operated to prevent or impair

—1270—

the use of the Spence transmitter that you gentlemen were —and Spence receiver—that you gentlemen were manufacturing and selling in connection with radio reception over head telephones, or in the horn type of radio loud-speaker? A. Well, I am not in a position to say offhand how that would be.

Q. Well, is there any carbon microphone or carbon transmitter in the receiving set that you meet in your household during the years about which I am inquiring? A. There was in the broadcast station, yes.

Q. At the broadcast station where the program was being broadcasted the performer or the person broadcasting spoke into a microphone, right? A. That is right.

Q. I am talking about the radio receiving set, the box containing a chassis, tubes, wiring, harness, which between the years—1920, 1927, '29—which between those years you purchased and installed in your house. Do I make myself clear? A. Yes.

Q. And into that receiving set in your household you

—1271—

plugged in a connection which enabled you to get a program over ear telephones? A. That is right.

Q. And over horn loud-speakers of the general appearance and shape of Plaintiff's 73 A? A. That is right.

Q. Now, I am referring to that radio receiving set in your household. Where was there in that radio receiving set a carbon transmitter or a carbon microphone—— A. There was none.

Q. —that could have—pardon, go ahead. A. Sorry.

Q. You were saying there was none? A. I thought you had finished your question. I said there was no microphone in the receiving set.

Q. Then what did the difficulties of your carbon microphone have to do with the application of that Spence apparatus for use in connection with radio reception by ear telephones or by horn loud-speakers? A. Well, if there was no microphone it couldn't have anything to do with it.

• • • • • • •

—1280—

• • • • • • •

Q. In any event, after all this experimenting that you have been telling us about, you ended up with Spence's thickness of the diaphragm in the receiver, is that right? A. We never departed from it, as I recall.

Q. You stayed right with it? A. That is my recollection. I am not sure of that point. There may have been some variation from it, and, as I said before, it varied with different uses. We may have used a different thick-

—1281—

ness in the Autophone to what we did in the marine phones.

Q. But in one or more of those uses you stayed right with the eighteen one-thousandths to twenty one-thousandths? A. I am inclined to think we did, although I am not positive of that point.

• • • • • • •

—1288—

• • • • • • •

Q. Do you remember that in December of 1918 or thereabouts you got a contract for a hundred thousand dollars? A. I don't recall the dates of these; that is, my mind is in a fog as to the exact dates of the exact orders.

Paul M. Farmer—for Defendant—Cross

Q. Well, do you remember—— A. After twenty-one years.

Q. Excuse me. Do you remember at any time in 1918 after Klaxon had taken over getting a contract from the United States Navy for delivery of marine telephones at

—1289—

the total contract price of one hundred thousand dollars or in the vicinity of that amount? A. Well, I recall there was one order after the Armistice, but as to the amount I am not sure.

Q. Well, will it bring the circumstances back to your mind if I suggest to you that there was an order placed which was divided between Stentor and Callophones—between Klaxon and Callophone? A. Yes, I recall there was one order divided.

Q. And wasn't that the order about which you testified this morning, that you felt definitely aggrieved because the division between Klaxon and Callophone had been made by reason of the policy of the Navy to stimulate competition in this field? A. Well, I don't know whether—I can't associate that with when the order was actually received.

Q. Not pressing for the moment the matter of the date when the order was received, it is the order which was received after the Armistice, you remember that? A. I believe it was after the Armistice.

Q. And do you remember that the division between Klaxon and Callophone was substantially one hundred

—1290—

thousand dollars worth to Klaxon and sixty-five thousand dollars worth to Callophone? A. Something like that.

Q. And that that was the division that you were trying to avoid when you were trying to impress upon the Navy people that they ought to give the whole order to Klaxon? A. Yes, I believe that was the order.

Q. Now, that one hundred thousand dollar order after the Armistice was during the year 1918, was it not? A. Yes.

Q. Is that one of the contracts—— A. I think it was——

Q. —which is exhibit—Defendant's Exhibit 32, or Defendant's Exhibit 34. A. I don't know.

Q. Well, it is—— A. Wouldn't it be possible to have a tabulation of these orders to show their order, rather than depend upon my memory, because I—I have very little recollection of just when which order was placed, because that was handled aside from the development and engineering.

—1291—

Q. Well, Mr. Farmer, not having the number of the contract, the Government number of the contract, I have found it impossible to get a copy of the contract itself in Washington, and I am put to relying on your recollection. Do I make myself clear? A. Yes.

Q. Now, my question is whether either of those exhibits, Defendant's Exhibit 32 or Defendant's Exhibit 34, represents a contract for one hundred thousand dollars procured for these marine telephones for the United States Navy after the Armistice in November of 1918. A. There was an order procured after the Armtistice in 1918, as I recall, but I am not sure that it was the one that we split with Callophone on, and I am not sure that it was for one hundred thousand dollars, but it sounds to me reasonable that it would have been that.

Q. Then will you look at those two exhibits and tell me whether either one of those comes to any such amount as one hundred thousand dollars? A. No, this is eleven hundred dollars, covering twelve loud speaking telephones and three sets of spares.

Q. This, the one that you referred to, being De-

—1292—

fendant's Exhibit 34? A. That is right.

Q. Now, what about 32? A. This evidently calls for something wrong there, two hundred systems, four hundred and nine dollars each. That is item nine, two hundred systems.

Q. And how much does that come to? A. $81,984.

Q. Now, are there any—— A. Excuse me, that is probably the——

Q. Now, I think you were testifying yesterday that there were other items upon this contract which went to you in addition to the two hundred systems. A. The papers you showed me yesterday were different papers to these.

Q. Well, then, let me get the ones that Judge Morris showed you, because those are only photostats of those.

Mr. Bernays: May I have the exhibits themselves?

By Mr. Bernays:

Q. Here are the papers which were marked yesterday Exhibit 32 and 34, Mr. Farmer. Now, will you take that

—1293—

Exhibit 32 that you were looking at yesterday, instead of using my copy, and see what it comes to. A. Well, Exhibit 32 calls for one hundred and forty-four systems, totalling $17,245.

Q. Awarded to Klaxon? A. Evidently.

Q. And what else? A. And two hundred systems at $409, totalling $81,984.

Q. Now, that is a total of how many systems? A. Three hundred and forty-four. Some are two-station and others are six-station.

Q. And do I make the total dollars correctly as being

$99,229? A. If your addition is right, Mr. Bernays, it was.

Q. Well, that is what I want you to check. Here it is, before you. A. Well, I better get these figures right, then. $17,245.44——

Q. I left out the pennies, yes. A. —and $81,984; yes, $99,229.

Q. Then that is the agreement, then, that is the con-

—1294—

tract that you got from the United States Government after the Armistice in 1918, with respect to which the Navy Department made a division between Klaxon and Callophone, is that right? A. This is the—this was the opening of October 14, 1918.

Q. Oh. A. And award of November 30, 1918.

Q. So that the contract date is after the Armistice? A. Yes.

• • • • • • •

—1305—

• • • • • • •

Q. Mr. Farmer, my notes do not show with certainty, and I shall, therefore, ask you as to Defendant's Exhibit number 25, which is entitled "Brief outline of the commer-

—1306—

cial value of Stentor products." Who was the author, or who were the authors of that writing? A. I believe this is Mr. Berg's memo.

Q. And is that the memorandum as to which you testified that you had a hand in the preparation of it and were, therefore, familiar with it? A. Yes.

Q. And that you were familiar with it as being a writing created in the ordinary and usual course of business of your company? A. Yes.

Q. Was it in the nature of a report from one officer of the company to another, or from one department to

another, upon the business of the company? A. I do not know what circulation this report had.

Q. Isn't it a fact that that writing was prepared to be handed over to your company's lawyer and to be used by him? A. I do not know what the original reason for this report was.

Q. I read to you, Mr. Farmer, Plaintiff's Exhibit number 106, just marked, and ask you whether that brings

—1307—

back to your mind what the reason for that report was. This, you will observe, is a letter dated April 18, 1919, addressed to George C. Dean, Esq., by Mr. O. C. Friend.

Mr. George C. Dean is the gentleman who was patent counsel for your company, was he not? A. That is right.

Q. It reads as follows:

"Dear Sir:

"This will confirm the decisions arrived at in our conference yesterday on the Spence-Stentor Patent Situation.

"You of course know that we want to approach this——

The Court: You are propounding a question?

Mr. Bernays: Yes, sir. I should otherwise be reading the document to the jury, and I thought that I could save a little bit of time by proceeding this way.

Mr. Morris: And the document is being read without having been introduced in evidence, I take it? I do not know what the document is unless it

—1308—

is something which has been introduced in evidence.

The Court: It was marked in evidence.

Mr. Bernays: It is Plaintiff's 106 in evidence, sir.

Mr. Morris: Oh, very good, then, I am sorry.

By Mr. Bernays:

Q. "You of course know that we want to approach this in a friendly and business-like way, and don't want our first conference with Mr. Danforth and Mr. Hollister to have any legal aspect.

"With this in mind you are to submit report to us amplifying the first part of your letter of April 3rd, giving patent numbers and dates and general information covering the whole situation.

"Mr. P. M. Farmer of the Klaxon Company is to submit a report on the devices which they are manufacturing at the present time in the Stentor Division of the Klaxon Company, showing the relation of the present product to the patents which

—1309—

Mr. Spence contracted with the Klaxon Company for.

"Mr. E. Berg will submit report on what they have run against in the commercial end of the business and their experience with apparatus which was sold by the Stentor Company prior to our taking it over.

"The Industrial Department has a lot of information on that side of it which will be very useful in the conference that Mr. McConnell and the writer will have with Mr. Danforth and Mr. Hollister.

"It is highly important that we have these reports at once, so kindly supply them to us with as little delay as possible."

Does that letter refresh your recollection that Defendant's Exhibit 25, entitled "Brief outline of the commercial value of Stentor products" was prepared for the company's attorney, as set forth in Plaintiff's Exhibit 106. A. It would seem that this is the report referred to which

Mr. Berg would make as to the commercial end of the
—1310—
business. This is headed "Brief outline of the commercial value of Stentor products", and it might conceivably be this report referred to.

Q. Now, just to make that certain I call your attention, Mr. Farmer, to Plaintiff's Exhibits 107 and 108, just marked, and direct your attention to the contents of Plaintiff's Exhibit 107, which I shall describe upon the record. It is a letter from the Klaxon Company to the same Mr. Dean, it is dated April 18, 1919, and is signed by E. Berg, Manager, Industrial Division, and reads as follows:

> "Attached I am sending you brief outline of the Stentor products commercial value as we have found it in our work.
>
> "While our files and records contain a great deal of detailed information on this subject, it is my understanding that the attached outline will serve your purpose for the time being."

Now, I ask you, is not the attached outline Plaintiff's Exhibit number 108, the outline which is referred to in that letter? A. That would seem to tie them together.

• • • • • • •

—1375—

• • • • • • •

VLADIMIR KARAPETOFF, witness for the defendant.

• • • • • • •

Redirect examination by Mr. Morris:

• • • • • • •

Mr. Morris: If Your Honor please, I withdraw the pending question or questions to Dr. Karapetoff, and I have no further questions from him.

• • • • • • •

Leo A. Kelley—for Defendant—Direct

—1376—

LEO A. KELLEY, was called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows:

Direct examination by Mr. Morris:

* * * * * * *

—1384—

* * * * * * *

The Court: Well, assuming the soundness of that proposition, pass to the next.

* * * * * * *

—1386—

* * * * * * *

And among the cases that we gave to Your

—S.M. 1868—

Honor, which run down as late as 71 Fed. (2nd), which is within very recent years, I shall advert particularly to only one more, which explains the rationale for the rule, and that is the case of Sproull against Pratt and Whitney, in 97 Federal at 807, where the Court following the rule said——

The Court: Page?

Mr. Bernays: I haven't got the inside page citation.

The Court: 97 Federal?

Mr. Bernays: The page of the report is 807.

The Court: 807.

Mr. Bernays: 807, sir. I thought Your Honor was inquiring about the inside page, and I do not have those on my notes.

That, again, was a suit under a license agreement, and again the question was raised that the

licensee was not liable because he was constructing something different from the patent.

Mr. Morris: Liable for what?

—S.M. 1869—

Mr. Bernays: Royalties, sir.

Mr. Morris: Very good.

Mr. Bernays: And the Court, applying the rule that I have cited to Your Honor, said the following:

"If this defense were satisfactorily shown, it would be so inequitable that it should not be sustained. Having agreed to manufacture under said patent, having stamped said punch with the date thereof, having advertised and asserted that it did manufacture the Kennedy punch, and having accounted and paid royalties on said theory, it should now be estopped to make said defense."; a case which is on its facts and on its holding on all fours with the situation that we have here.

The Court: Through?

Mr. Bernays: Yes, sir, thank you.

Mr. Morris: Instead of being on all fours with the case here, it is antithetical to the case which we have here so far as I understood it from the statement of the learned counsel to Your Honor.

—S.M. 1870—

My inquiry to him while he was speaking was what that was for, and he said "royalties". Royalties are recoverable by a patentee only for apparatus or devices or a patented thing which has been made, used or sold. That is not this case at all. This case is a suit not for the non-payment by us, by the Klaxon Company, of royalties for articles made and sold by us. That is not here involved. The question is, here, as to whether we used our best

efforts, under a certain provision of the contract, in the manufacture and sale of these things. Consequently, the thing that we are talking about here is not the things that we made and sold, because we did, wisely or unwisely, foolishly or wisely, pay royalties, divide the profits with Stentor on those things that we did make, regardless of whether they were within the four corners of the Spence patents or not, when it consisted of telephone apparatus.

But here this suit is not at all for the things that we did make, but is stating that notwithstanding the testimony in this case with respect to

—S.M. 1871—

the Spence patent, and that which is being adduced, that we should have continued to make these devices which according to our testimony would not function, which, according to the testimony I am about to offer, was but a theory, and if it would do anything, it would not work so as to have commercial value, and that no means were provided in the patent whereby it could be made to function. That is the case that we are making. And I find no fault, I have no criticism of any of the cases that were cited by the learned counsel to Your Honor. I merely state that they are without application to the case at bar. Did they apply to the case at bar, and a person took a license under a patent believing, erroneously, that the device of the patent had some commercial value or utility, and he made, in that erroneous belief, and sold a hundred, a thousand, of those things, hoping that it could be made to work, and he finds, as in this case, that it cannot be made to function, and then they sue him because he does not manu-

—1387—

facture a million or ten million more—there is no room for the application of estoppel in such a case, and there is no case cited by the learned counsel for the plaintiff that has any application to the facts in the case at bar.

The Court: Well, see how far I follow you, Judge. If this were a suit for royalty you are an exclusive licensee,——

Mr. Morris: I will assume so.

The Court: —and as such, you cannot question the validity of the patents—as such.

Mr. Morris: On that assumption I cannot. Waterman *vs.* Mackenzie tells me that we are not a licensee, but we are in fact the assignee. Your Honor has dealt with that. I am not concerned here with whether we are questioning the validity of the patent or merely showing that this device whether it would make a noise, and perhaps it has sufficient utility under the patent law even if a noise can be made by it, maybe it is sufficiently valid under the patent law if a sound may be transmitted, although it may not be transmitted

—S.M. 1873—

with fidelity or with accuracy, it may have utility under the patent law if it will transmit a trombone sound, but will not repeat the sounds of the voice—so that I am not particularly concerned about attacking the validity of these patents. I am saying that they had no commercial value, the device of the patent had no commercial value so far as we know when a device was made in accordance with the patent.

Now, then, the plaintiff's own exhibit——

The Court: What was the question, had the device commercial value?

Mr. Morris: I wonder what the question was. I have lost it.

The Court: Will you repeat the question?

(The question was repeated by the Reporter, as follows:

"Q. What do you understand, Mr. Kelley, by the statement '* * * transmission of sounds in their original purity, free from distortions or modifications', et cetera, as stated in that paragraph.")

—S.M. 1874—

Mr. Morris: You see, I am not asking—I am asking this witness to construe the patent and tell us what this patent means in that particular section.

Mr. Bernays: Would Your Honor bear——

The Court: You are not contending——

Mr. Bernays: Excuse me, sir.

The Court: —that this expert may not testify as to the limitations that the prior art places upon this patent?

Mr. Bernays: I should say, sir, that there might be a serious question about that, but——

The Court: No, but categorically, are you or are you not?

Mr. Bernays: I am trying—I am trying to consider that question quickly and reach a——

The Court: Verbally or mentally?

Mr. Bernays: Mentally, sir.

The Court: Mentally; good.

Mr. Bernays: No, I will not dispute the admissibility of testimony that Mr. Kelley may wish to put in with respect to prior art. I do stand,

—S.M. 1875—

however, upon the two propositions which I have made to Your Honor: first, as to validity, and,

second, as to whether the patent was in fact used in the manufacture of these devices.

Now, on that latter score, on which the rule of estoppel is fixed by the cases to which I adverted, I wonder if Your Honor would bear with me for one-half minute longer for a discussion with respect to the distinction that Judge Morris undertook to draw between those cases and the present situation. The question is: may a licensee who has operated under a license, stamped the product, paid royalty, and so on, thereafter come in and say that what he has been manufacturing is not manufactured in accordance with the teachings and principles of the patent? Now, Judge Morris is quite right in his statement of fact that in those cases to which I have called Your Honor's attention the question was as to royalty, but I submit that there is no distinction to be made in the principle by reason of that circumstance, because the rule, as is pointed out in the Sproull versus Pratt —S.M. 1876— & Whitney case, is the rule of equity which says that if this defense were satisfactorily shown it would be so inequitable that it should not be sustained.

Now, here we have a situation in which upon the undisputed facts this licensee did a million dollars' worth of business in a product every bit of which was stamped with our patent. We have a situation in which this licensee refused to let us have our license back unless we paid for it. We have a situation in which general counsel for the licensee wrote us and said, as appears from Plaintiff's Exhibit 35, "If you wish to go into radio you must pay us for those rights or share your profits with us, because we hold the exclusive

license, but we will not let the license go otherwise." There are other exhibits among the plaintiff's trial exhibits, sir, which show that as late as 1929 they would not let go this patent because they wanted to satisfy the requirements of their own affiliate, or fellow, wholly-owned subsidiary of

—S.M. 1877—

General Motors Corporation, Fisher Body Corporation. Can there be in a court of justice a suggestion more inequitable than that these people, who held us out of this license for the thirteen years of the time for which we granted it to them, shall now come in and introduce expert testimony to show the devices with respect to which they did that did not come within the license or within the patents?

The Court: You did demand rescission?

Mr. Bernays: I beg your pardon, sir, I did not understand you.

The Court: You did demand rescission?

Mr. Bernays: No, sir.

The Court: Oh.

Mr. Bernays: We asked that we be allowed to rescind, or to make an arrangement whereby we could take over, because I am not at all clear that under this contract we could have stood upon a rescission.

Moreover, our business had been wholly disorganized. We had turned the whole operation

—S.M. 1878—

over to this licensee way back in 1918. We had become an inactive company, in fact, we had dissolved under the laws of the State of New York. We were no longer in business. What could we do with the patent, taking it back at that late date?

Colloquy of Counsel

The Court: You are not contending that War time conditions persisted after the Armistice?

Mr. Bernays: No, sir, but I am contending that—excuse me.

The Court: And the profits made under War contracts were under conditions extremely different from any that existed thereafter.

Mr. Bernays: Different in some respects, sir; less favorable in some respects, more favorable in others, yes.

The Court: Did you have to do with making contracts during the War?

Mr. Bernays: No, sir, I was in the Service, in a more active branch of it.

The Court: Very good.

Mr. Morris: It seems to me the argument—

—S.M. 1879—

and I was rather reluctant to continue it here, I shall be delighted, we are arguing, we are arguing case and not admissibility of this, because apart from Waterman versus Mackenzie we are bound——

The Court: Judge, I want to get the exact point that you are now making. Now, the exclusive licensee, or a licensee, may not question the validity of the patent——

Mr. Morris: That is right.

The Court: —for which he holds a license.

Mr. Morris: No doubt of that.

The Court: That is an established principle of law.

Mr. Morris: No doubt about that. I agree with that.

The Court: Very good.

Mr. Morris: Now, let's assume that there is no question about it, and that is question "A", and we put it here and lay that one aside.

The Court: Very good.

Mr. Morris: Then I am not a bit concerned

—S.M. 1880—

about pressing this one thing that I am going to discuss. I am mentioning it only because it comes within this case, within the realm of this case if we want to go into it, and that is, as I understand Waterman versus Mackenzie, this is not a license, but is an assignment, because it is an unqualified and unlimited right to make, use and vend. Your Honor dealt with that—I have forgotten just at the moment whether it was in the Popsicle case, but I am not concerned with whether that principle of Mackenzie applies here or not, because——

The Court: Well, then, that is a condition precedent to the validity of your argument, that there was a sale, not a license?

Mr. Morris: My general argument, but we are far away from the pending question. I am asking this witness not at all as to anything that goes directly to the validity of this patent. Let us assume that I am going to limit my questions, that I am not attacking the validity of the patent. This question is not going to the validity of the

—S.M. 1881—

patent. It is going to the scope and meaning of the specification, and is not——

The Court: Well, do we face ultimately the question as to whether or no this is a sale or a license?

Mr. Morris: Theoretically, yes; practically, I think no, and I think I can——

The Court: Well, can we clear the atmosphere by deciding that question?

Mr. Morris: I notice it is half past eleven. I think by the time Your Honor comes back from mid-morning recess I will say you need not bother with that, because for practical purposes in the trial of this case I don't care whether this is an assignment or license.

The Court: Well, then, you will assume it is a license?

Mr. Morris: No, I will advise you on return from recess——

The Court: Oh.

Mr. Morris: —as to whether I will withdraw that.

—1388—

The Court: Very good. Gentlemen, the Court will recess for five minutes.

(Whereupon, at 11:40 A. M., a recess was taken for five minutes.)

Mr. Morris: We will leave to Your Honor the question as to whether this was a licensee or an assignee. We desire to be heard on that. We think the question is not now raised, that that issue is not now raised, but we will leave it to you to decide, and we will not withdraw that.

I should like, however, on this discussion to point out a further reason that the cases which were cited by the counsel for the plaintiff have no application by pointing out to Your Honor those portions of Plaintiff's Exhibit 96:

"Possibly Mr. Spence may at some time have made a telephone receiver embodying this inven-

tion, but no one having anything to do with the manufacturing business seems to have any knowl-

—S.M. 1883—

edge of any such apparatus. The diaphragm now used is an ordinary flexible diaphragm such as is commonly used in telephone receivers. It is not lightly confined against a delicate air cushion but is tightly clamped between rubber gaskets made from small size rubber tubes cut to length and left open at the ends so that air cushion effect is absolutely impossible. Moreover, the tubing, though necessarily small, has relatively thick walls and they clamp the diaphragm tightly enough to flatten the tubes forming a water-tight joint, and hold the diaphragm in a very accurately fixed position which must be close to but out of contact with the poles of the receiving magnet and which must be maintained throughout the life of the instrument notwithstanding the continuous powerful pull of the magnet.

"In practice, however, your people find that these open ended rubber tubes even when screwed down flat are very unsatisfactory for quantity production——

—1389—

The Court: Judge, I wonder if by stating the state of my mind we might be approaching some mutual ground on which we would prolong this contest?

Mr. Morris: As you will. It seems to me that Your Honor may be called upon to make a direct ruling as to whether this is an assignment or a license, and as I say, personally I am not concerned which it is. Nevertheless——

• • • • • • •

The Court: Well, I have considered it, and I consider it a license——

Mr. Morris: Very well, then at some time——

The Court:—in view of the payment of royalties, and in view of the conduct of the parties under it, as a definitive construction, I regard it as a license, among other reasons.

Mr. Morris: Very good. Now, I am perfectly willing to consider that a ruling in the case, although that issue is not now presented by this question, but I understand it. If Mr. Bernays is willing that that be considered as a ruling in this case all I will do is ask for an exception

—1390—

under it and proceed on the theory that this is a license.

The Court: Well, if it is an appropriate time to make the ruling, the exception is entered.

Mr. Morris: Well, is it agreeable to counsel for plaintiff to consider that a ruling for all purposes of this case?

Mr. Bernays: Oh, certainly. That is the ruling——

Mr. Morris: Very good.

Mr. Bernays: —that I have been urging, sir.

The Court: Now, the next point, Judge Morris, is the product of this licensee that was marked "Patented", that it sold to its associates or the outside world. You are contending that that stuff was not within the patent?

Mr. Morris: That stuff is not here in issue. The thing——

The Court: I would be inclined as at present advised to consider you as estopped from questioning that that matter, so marked,——

—1391—

Mr. Morris: And so sold.

The Court: —was not within the patent.

Mr. Morris: I think there is no difference, I

think I am in accord with the view that you say, with respect to that, the material that was actually sold——

The Court: Yes.

Mr. Morris: —and actually delivered.

The Court: And actually marked "Patented".

Mr. Morris: And actually marked "Patented". If in a suit for division of the profits with respect to those actual articles, I would think that Klaxon, having marked those, even though it was not within the patent, might have been precluded with respect to those specific articles from taking that position. But those articles are not here in issue. We are dealing now with the use of best efforts to do what? To make something under this patent—not the things which we are estopped from asserting, because there is no estoppel running here. Indeed, that which I just read is the evidence of plaintiff,

—1392—

which says that the things that we were manufacturing were not under the patent or not under the patents. That is, he says: "Possibly Mr. Spence may at some time have made a telephone receiver embodying this invention, but no one having anything to do with the manufacturing business seems to have any knowledge of any such apparatus." That is their testimony. It is not mine.

The Court: No, with the unmanufactured stuff about which they are complaining——

Mr. Morris: Yes.

The Court: —undoubtedly you can show that had it been within the patent it would have been worthless.

Mr. Morris: Well, the difference in those boundaries I think won't make any practical difference, so if I may—I think that is not a ruling, how-

ever, unless Your Honor desires me to consider it as such.

Mr. Bernays: I request that——

The Court: The last utterance of the Court——

—1393—

Mr. Bernays: I request that ruling, sir, and on the record acquiesce in it. If the defendant can show the state of facts that Your Honor has suggested in your observation I should concur with Your Honor that that would be admissible. That is not within the other two fields. And I am perfectly willing to abide by that ruling.

Mr. Morris: I don't know exactly where we are.

The Court: Well, this has just been discussion.

Mr. Morris: Yes.

The Court: I am not pretending to rule anything.

Mr. Morris: The position which I will take is not adverse to the last statement by Your Honor. In order that we may have the whole thought clear, it will be my position that as to stuff which we have not manufactured and did not manufacture, if the stuff—I don't know how to say it. Let me try it again.

The Court: Well, that is all right—had it been

—1394—

within the patent, would have been valueless.

Mr. Morris: Yes, but I want to go further—had it been within the patent would have been valueless, and that we are not estopped from showing that nothing that was ever made was within the patent.

The Court: Yes, although marked "Patented".

Mr. Morris: If marked "Patented".

The Court: You are technically estopped——

Mr. Morris: As to that which was marked.

The Court: Exactly.

Mr. Morris: I agree with that, but my mental confusion—it is not a practical one, but the mental confusion is that if my friend, the learned counsel, should assert that we should have continued to make that which we did make, but which as a matter of law and fact was not within the patent, we say that we were under no obligations to do that.

The Court: Or if within the patents was valueless.

—1395—

Mr. Morris: That is right.

The Court: That is all right.

• • • • • •

Plaintiff's Exhibit 12

Contract No. 34,145 dated January 7, 1918, between Stentor Electric Manufacturing Company, Inc. and the UNITED STATES covering the purchase by the Navy Department of 360 sets of loud speaking telephones for use in connection with fire control on merchant vessels and transports carrying armed guards, for a total purchase price of $109,080.

Plaintiff's Exhibit 13

Contract No. 2047 dated November 9, 1917, between Stentor Electric Manufacturing Company, Inc. and the UNITED STATES covering the purchase by the Navy Department of 50 telephone sets of the loud speaking type as manufactured by the Stentor Electric Manufacturing Company, Inc. for a total price of $21,000.

Plaintiff's Exhibit 14

Contract No. 1029 dated February 2, 1918, between Stentor Electric Manufacturing Company, Inc. and the UNITED STATES covering the purchase by the Navy Department of 24 Stentor Navy type loud speaking telephones for use on United States destroyers for a total purchase price of $2,737.80.

Plaintiff's Exhibit 15

Contract No. 33410, dated November 30, 1917, between Stentor Electric Manufacturing Company, Inc. and the UNITED STATES covering the purchase by the Navy Department of 50 telephone sets of the loud speaking type, Navy standard design, for a total purchase price of $15,800.00.

Plaintiff's Exhibit 17

Contract No. 33199, dated November 19, 1917, between Stentor Electric Manufacturing Company, Inc. and the UNITED STATES covering the purchase by the Navy Department of 150 telephone sets of the loud speaking type as manufactured by the Stentor Electric Manufacturing Company, Inc., for a total purchase price of $47,400.00.

Plaintiff's Exhibit 18

THIS AGREEMENT entered into between KLAXON COMPANY, a corporation of Delaware, having its office and principal place of business at Newark, N. J., STENTOR ELECTRIC MANUFACTURING COMPANY, a New York corporation, having its office and principal place of business at Long Island City, N. Y., and J. L. SPENCE, residing at New York City

WITNESSETH:

That in consideration of One ($1.00) Dollar and the mutual covenants herein contained, and other valuable considerations,

FIRST: Said J. L. SPENCE hereby agrees to enter the employ of the Klaxon Company for a period of one year from the 20th day of May, 1918, and further agrees to devote all of his time to the development and the manufacture of articles and devices covered by a certain agreement entered into between the Stentor Electric Manufacturing Company and the Klaxon Company on the 20th day of May, 1918, as provided in Article Nineteenth of said contract of May 20th 1918.

SECOND: That the services of the said J. L. Spence to the Klaxon Company shall be in connection with the de-

velopment and manufacture of said articles, except tha the Klaxon Company may require other services of th said J. L. Spence along similar lines of development an manufacture.

THIRD: It is further understood and agreed that a inventions and improvements made by the said J. L Spence upon said articles and devices, shall for the perio during which said agreement between Stentor Electri Manufacturing Company and Klaxon Company remain in force, be the property of the Stentor Electric Manufac turing Company, and all patents thereon will be issued t the Stentor Electric Manufacturing Company, the sai J. L. Spence hereby agreeing to execute suitable assign ments or other instruments for that purpose, with th understanding that during the period of said agreemen of May 20th 1918, between the Stentor Electric Manufac turing Company and the Klaxon Company, the Klaxo Company shall have the right to a sole and exclusiv license to make, use and sell articles and devices whic are the subject of said inventions, improvements or pat ents, which license shall be in all respects the same as th license granted by the Stentor Electric Manufacturin Company to Klaxon Company under said agreement o May 20th 1918, and subject to the same terms and condi tions.

FOURTH: Klaxon Company agrees to pay to the sai J. L. Spence the sum of Five thousand two hundre ($5200.00) Dollars per year as salary, in equal monthl installments.

FIFTH: It is further understood and agreed that thi contract of employment shall at the option of the Klaxo Company be extended for a further period of three years on the same conditions and provisions.

Exhibit P-18

SIXTH: Pursuant to the provisions of said agreement entered into between the Stentor Electric Manufacturing Company and Klaxon Company, dated the 20th day of May, 1918, in consideration thereof, and for the purpose of effectuating the provisions of Article Nineteenth of said contract of May 20th, 1918, Stentor Electric Manufacturing Company hereby releases said J. L. Spence from existing contracts of employment with said Stentor Electric Manufacturing Company, on his acceptance of employment with Klaxon Company hereunder. All liability of either party to the other by reason of existing employment or contracts of employment between said J. L. Spence and the Stentor Electric Manufacturing Company is terminated on such acceptance.

IN WITNESS WHEREOF the said J. L. SPENCE has hereunto set his hand and seal this 17th day of
1918, and the said STENTOR ELECTRIC MANUFACTURING COMPANY and KLAXON COMPANY have hereunto affixed their respective corporate seals, and caused these presents to be signed by their Presidents, this day of
1918.

J. L. SPENCE (L. S.)

STENTOR ELECTRIC MANUFACTURING COMPANY
By BURLL HOLLISTER
President

KLAXON COMPANY
By D A W CRANE
President

Plaintiff's Exhibit 32

(12 pages of lithographs follow.)



563
183
Plaintiff's Exhibit 32

Stentor file Plaintiff's Exhibit No. 32 (Stentor Information file)
Clark (Part of children (11))

KLAXON
STENTOR
AUTOPHONE



P-6 #4 Box 4

BLANK PAGE

564184

The

KLAXON-STENTOR AUTOPHONE

ARTISTIC IN DESIGN
EQUIPMENT OF
SURPASSING MERIT,
COMBINING UTILITY,
COMFORT AND SAFETY



KLAXON COMPANY
MOTOR EQUIPMENT DIVISION
DETROIT, MICHIGAN

BLANK PAGE

The KLAXON-Stentor Autophone

THE recent announcement that the KLAXON Company had absorbed the organization of the Stentor Electric Manufacturing Company, and added the Stentor Autophone to its select line of automobile equipment, created deep interest throughout the trade.

This product was proved by KLAXON executives and engineers to be the best and most practical of its kind. And it was this and that entitled the Stentor Autophone to the KLAXON name—the KLAXON stamp of quality, and KLAXON service. The improved product upholds the character of the line.

A Practical Instrument

The KLAXON-Stentor Autophone enables a passenger in the rear seat to hold natural, easy conversation with driver or chauffeur in the busiest traffic, without disturbing either the comfort or discourse of others in the party. It is equally efficient in either open or closed cars. Now it is difficult to get the driver's attention without shouting. It is awkward and disagreeable to lean over the laps of guests in order that the instructions may be heard. Moreover, it is dangerous when the man at the wheel must turn his head to listen. These difficulties the KLAXON-Stentor Autophone overcomes. Directions are given the driver just as simply and conveniently as though the speaker were seated at his side.

For Care of Quality

Modern motor cars take their attraction as much from useful appointments as from the mere power to travel. The buyer observes these things, but he looks upon the car as a unit, the product of one manufacturer. Factors of comfort and convenience react to its advantage or disadvantage according to their quality. The body of a car is judged by its appointments. Makers who realize this, and who are particular to maintain a reputation of uniform quality for their products, adopt the KLAXON-Stentor Autophone as the one efficient, satisfactory instrument of its kind.

Supremacy of the Autophone

The superiority of the KLAXON-Stentor Autophone lies in its ability to operate under all conditions. KLAXON-Stentor Autophone transmits only the words of the speaker and not the conversation of the other passengers nor the noises of the street. Hence no confusion of sounds is transmitted to the driver. With the Autophone there is an efficient transmittal when the street is noisy, the windows open and conversation going on in the car. The patented, exclusive diaphragm of the KLAXON-Stentor Autophone makes this possible.

The following example shows how perfectly the Autophone operates. It happened at Forty-second and Broadway. An elderly lady in a limousine gave a direction to her chauffeur. The message would not interest you—but this part of our story will.

The windows of the limousine were open. Forty-second and Broadway was crowded, noisy as usual. A military band was just passing from sight on Forty-second. There

BLANK PAGE

...women were in the car—one on either ...e and one in front of the woman speaking. ...ey were conversing. The order was given ...a normal, conversational way—no shouting ...gesticulating. The chauffeur heard every ...rd spoken, easily, distinctly—no noises, no-...versation except that intended for him. ...nd this without turning his head or taking ...is eyes off the congested traffic through which ...e was guiding the car. The instrument ...hrough which the owner of the car trans-...itted her message was the KLAXON-...entor Autophone.

Simplicity of Operation

...In ease and convenience of operation the ...tophone has the advantage. Instruments, ...odelled after the microphone rather than ...e telephone, require the speaker to signal ...th a buzzer, press in a button, and dictate ...s message in a loud, deliberate, even tone. ...th transmitter and receiver are at a dis-...ce from the persons using them. The ...ssage carried is necessarily weak, and fre-...ently is misunderstood. Loud and precise ...ech is necessary; whispers or words spoken ...n an ordinary tone are not transmitted.

...It is agreeably different with the KLAXON-...ntor Autophone. As the speaker takes the ...nsmitter in hand, the thumb automatically ...sses a small button in the handle. That ...ne; and then talks in a normal, easy, ...versational tone to the driver. It is not ...cessary to use any special tone of voice. ...e KLAXON-Stentor Autophone reproduces ...y tone of the voice from a whisper to a ...ut and carries the message distinctly to ...e ears of the driver.

Location is Convenient

...The receiver is placed in a position in front ...o that the driver hears the message perfectly ...thout turning his head or taking his eyes ...om the traffic. On closed cars, the receiver is ...ually mounted on the framework of the car ...ar the ear of the driver, whereas on open ...s it is either inserted in the dash or at-...ched to the steering column.

Neither the vibration of the car nor road shocks will ever impair the efficiency of the KLAXON-Stentor Autophone.

Accessible to Any Passenger

Another exclusive feature of the Autophone is its accessibility. A long cord makes the transmitter portable, and it can be used by any passenger in the car without disturbing the comfort or position of the others. In using the Autophone the passenger is not required to change position, as in the case of stationary transmitter.

In all ways the KLAXON-Stentor Autophone is a superior instrument. The complete equipment consists of a six-foot cord, a cord winder, an induction coil, a receiver with horn, and sufficient wire for installation in any part of the body.

The Autophone when furnished in artistic designs to conform to interior decorating schemes is an ornament of striking beauty.

A Credit to the Car

Discriminating buyers want motor cars that combine every detail of comfort and convenience—that get the most out of motoring. And the quality of these appointments either increases or reduces the appeal of the car. The most prominent evidence of quality in any motor car is its equipment.

The KLAXON-Stentor Autophone, like all KLAXON equipment, reflects to the credit of the car it serves. It the best device for the purpose, and a single comparative test will convince.

Guaranteed to Satisfy

In point of service, mechanical design and ornamentation, the Autophone is an equipment of surpassing merit.

The unfailing guarantee of the KLAXON Company backs every statement made in this writing, and insures the instrument against any defect in material or workmanship. Close, co-operative, voluntary service protects both the manufacturer and his customers.

BLANK PAGE

The Autophone for Ambulances

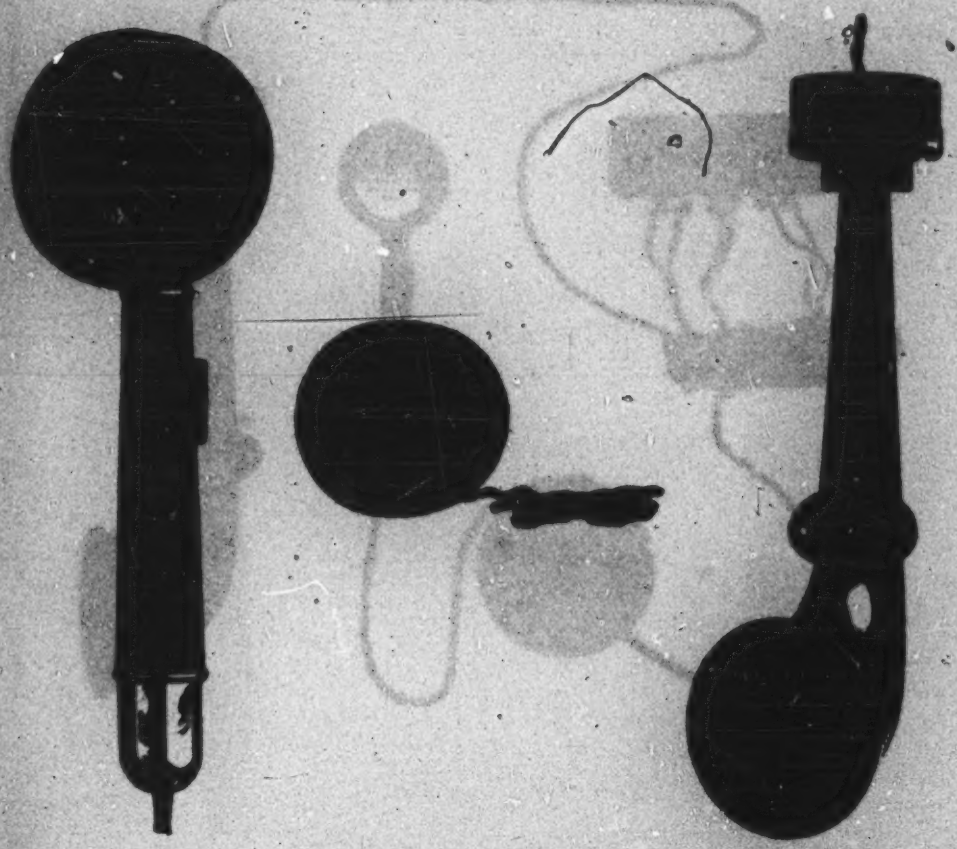
The adoption of the KLAXON-Stentor Autophone as an instrument of communication in ambulances has met with great favor. It fills a distinct need which no other instrument has yet been capable of filling.

The Autophone for ambulance use possesses all the features which recommend it for closed passenger cars, plus many additional advantages over instruments formerly used. The Autophone greatly magnifies the sound of the voice, which is a decided advantage in many ways for ambulance use. It insures that the driver will hear the message distinctly and quickly above the traffic noises or any noises within the ambulance, even when spoken in a low tone. The high rate of speed and the constant sounding of horn or gong in no way interferes with its effectiveness.

There is often necessity for using one hand to hold the patient while speaking with driver or doctor in front—the length of cord permits this to be done without any inconvenience. The transmitter can be so placed that it may be used either from within or from the rear step of the ambulance. It can also be installed for either one way or two way communication.

The simplicity of the KLAXON-Stentor Autophone and the ease with which the enamel transmitter may be kept cleansed and sterilized is another feature which recommends it. The photographs reproduced on the opposite page show the Autophone in use.

BLANK PAGE



Complete Standard Set

Standard Transmitter and Standard Receiver with Cord Winder

Horns are Made for Either Right or Left Hand Drive

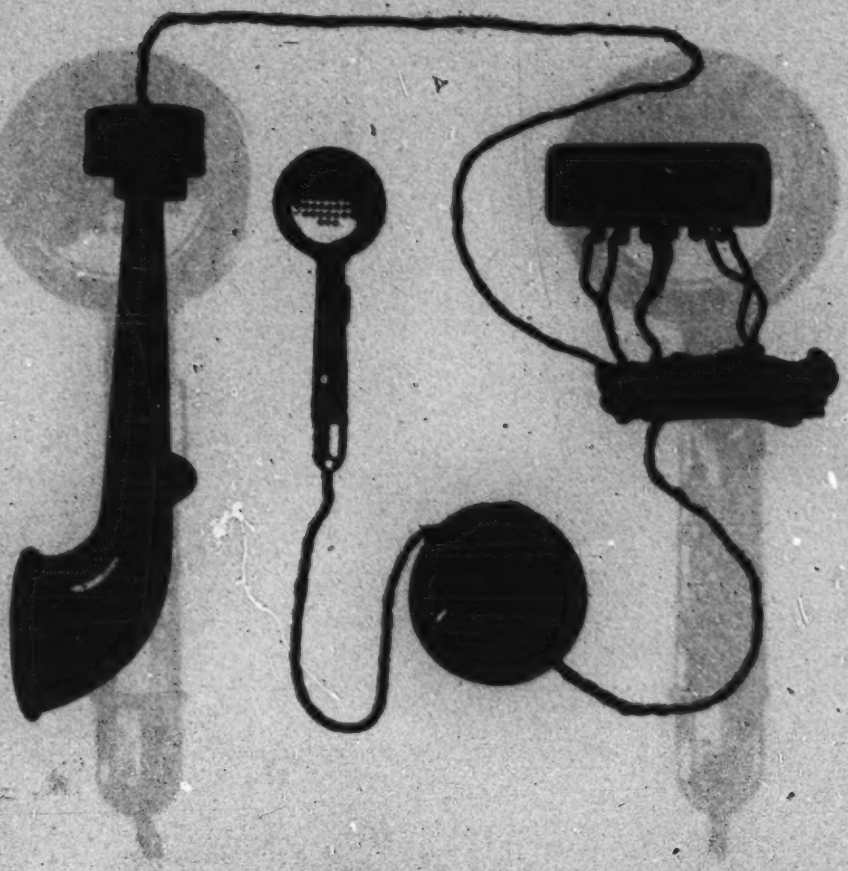
The Standard Transmitter has Tiffany finished base and mouthpiece, with ebony finished handle, unless otherwise specified. It can be supplied also in any color enamel. The cord is made in colors to match or harmonize with the interior finish of the car. This, as well as all other types of KLAXON-Stentor Autophone transmitters, is equipped with an especially designed double spring cord winder, with no sliding contacts. Particular care has been taken to construct this cord winder so that there will be no wear on the transmitter cord. This winder is unlike any other on the market, and is considered by a large number of body builders to be the most efficient article of its kind made.

The Receiver and Horn are finished in black enamel for all sets, and brackets and screws are furnished for installation. The Receiver is placed on the body of the car in such position that the opening of the Horn is on a level with the chauffeur's ear, thus enabling him to hear the message distinctly without changing his position or moving his head. It avoids the usual necessity of diverting his attention from the traffic or in any way endangering the occupants of the car.

The voice of the speaker is magnified seven times, or in other words, the driver hears the message seven times louder than it is actually given by the speaker in the car. In point of safety and convenience this feature cannot be overestimated.

BLANK PAGE

369189



Complete Standard Set

The complete equipment consists of a transmitter with a six-foot cord, a cord winder, an induction coil, a receiver with horn, and sufficient wire for installation in any part of the body.

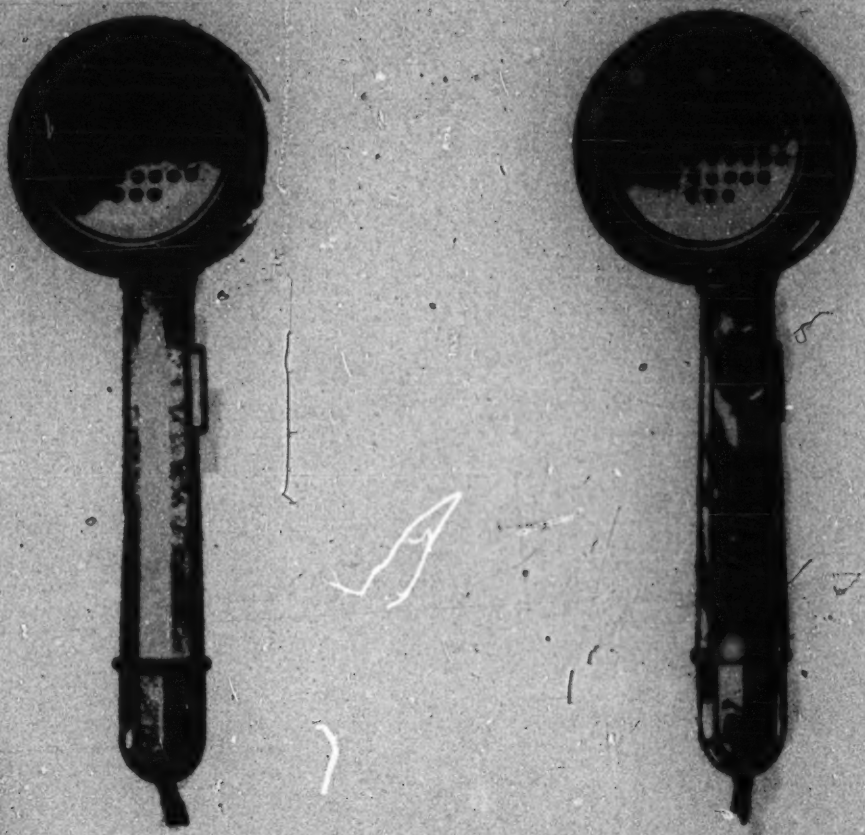
The induction coil which forms a part of the complete set eliminates the possibility of burning out the coils in either transmitter or receiver, and also takes care of any overload from the battery.

The Autophone is connected with the battery of the car and does not require dry cells, thus eliminating what has always proved a great source of trouble in instruments of communication.

The Transmitter in all Standard Sets is equipped with a device for removing it from the pocket in which it is installed.

The Cord Winder provides six feet of cord, making the transmitter accessible to any part of the car without inconvenience to any of the occupants, and avoiding the necessity of the speaker leaning over or changing seats while speaking to the driver.

BLANK PAGE



White Enamel and Gold Transmitter and Mother of Pearl Transmitter

The White Enamel Transmitter, with [illegible], ferrule and face plate finished in Gold, produces an unusually dainty effect. A Gold finished cord is furnished with this type of transmitter to complete its elegance. The richness of appearance of this transmitter in cars upholstered in dark blue, maroon or green cannot be surpassed.

These transmitters will especially appeal to those ladies who desire daintiness and elegance in the interior equipment of their motor cars.

This same design of transmitter is also furnished with Mother of Pearl handle, in several colors, with the metal parts finished in either Gold or Silver. The face plates of these instruments are finished with Cloisonnet Enamel rings in color to match the upholstery if desired. In this way a variety of choice effects can be secured to suit the tastes of those who demand daintiness as well as quality.

In the illustrations it is impossible to show the extreme beauty of these transmitters.

BLANK PAGE



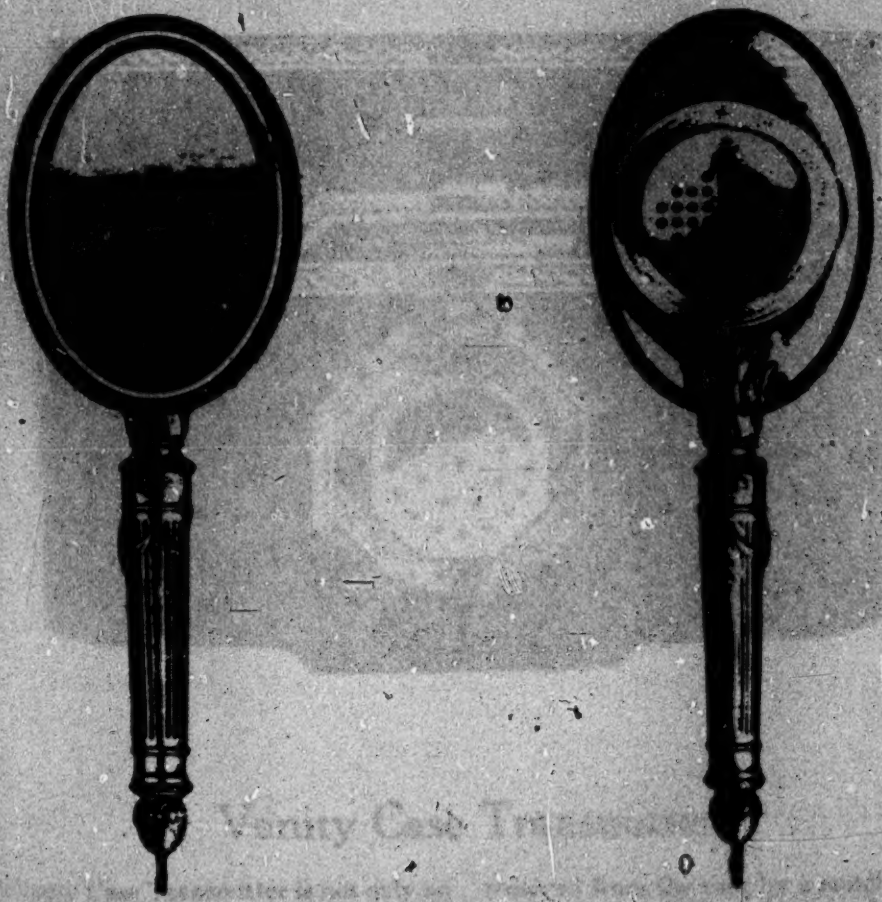
Sterling Silver and Type 263 Transmitters

The Sterling Silver Transmitter is made up with Silver or Chromonet Enamel face plates in any color desired. The handles and backs are beautifully finished and can be had in plain or highly ornamental effects, in round or octagonal shapes as desired.

Particularly substantial and rich effects can be secured by making the transmitter design to conform to that of the other car equipment, with enamel face and cord to match the upholstery in color. The same design can also be made in solid brass, with any of the finishes in which we make the "Type 263" transmitter.

The "Type 263" Transmitter can be made in Bronze, Oxidized Silver, Gold, Brush Silver, Gun Metal or Standard Black Enamel. This variety of finishes gives a wide range from which to select equipment which will best harmonize with the interior of the car and secure the desired effect of "class" and quality.

BLANK PAGE



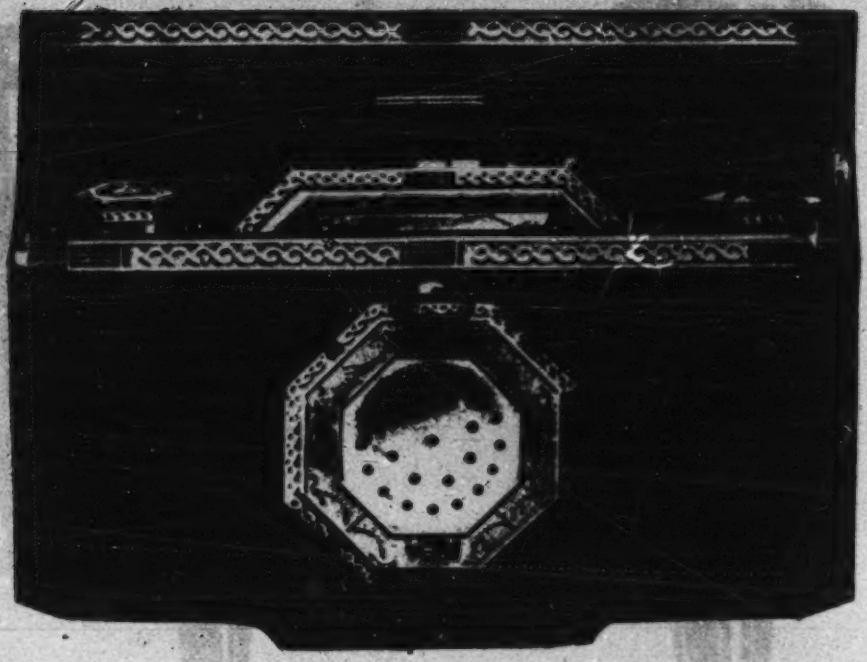
Hand Mirror Transmitter

The Hand Mirror Transmitter is of beautiful design with a French bevel plate mirror on one side and transmitter on the other. When there is not sufficient room for the artistic and convenient arrangement of all of the interior equipment required, it will be found that the Hand Mirror Transmitter will often provide the service of a vanity case—thus combining the two and conserving space on the inside of the car, at the same time being highly ornamental.

The transmitter side can be made so that it will have the design used on the dome lights or the corner lights. If enamel is used, the instrument can be made with enamel face plate.

In practically all cases the face plate is made in special design to conform to the interior finish of the car in which it is to be installed, or to conform to the taste of some particular patron who is having his or her car body built to order.

BLANK PAGE



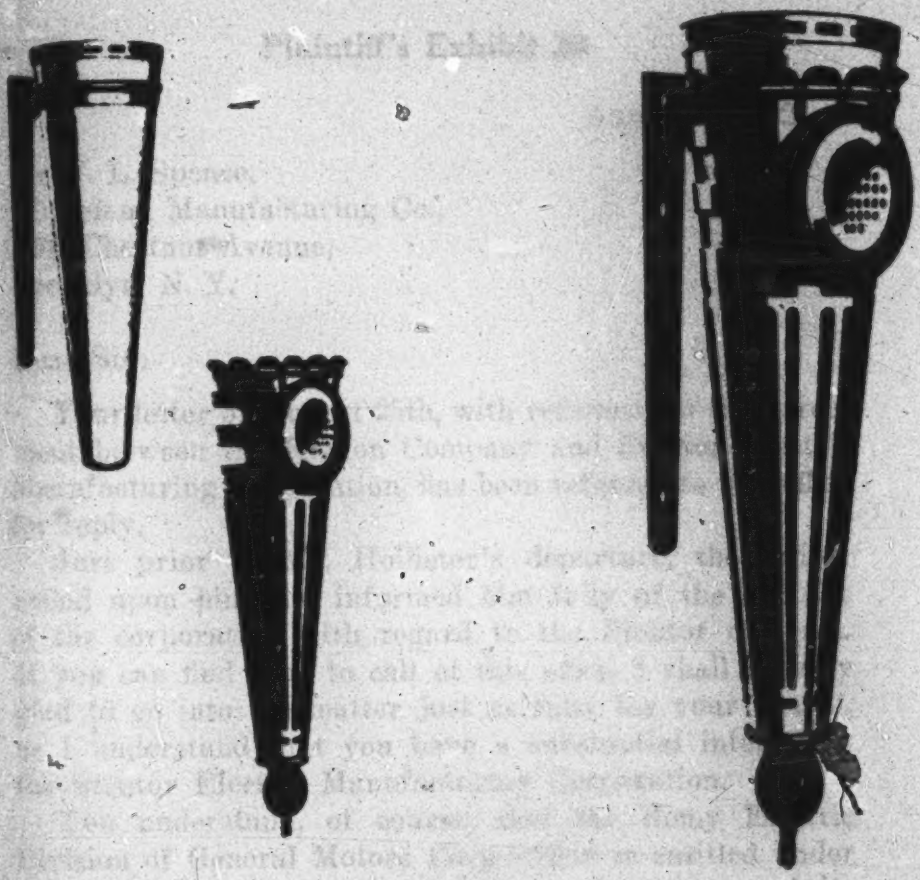
Vanity Case Transmitter

The Vanity Case Transmitter is not only an ipment of great beauty, but combines in unique way with several articles con- ered essential to the comfort and conven- e of milady's limousine or town car. It es up no extra space, is never in the way, l is easily accessible to anyone in the car.

The use of the Vanity Case Transmitter es the problem of finding room to place necessary instrument for communication h the driver. The Vanity Case Trans- ter will take no more room than was for- ly occupied by the watch. Now that the t watch eliminates the necessity for a ch in the vanity case, this space can be ed for a tastily appointed vanity case taining the transmitter in addition to the l toilet articles. The transmitter can be removed from the case by a small watch ring and the cord is taken care of by the concealed cord winder. When in normal position in the case nothing shows but the transmitter face, which can be designed to conform to the other interior fittings, in either round or hexagonal shape.

The Vanity Case style of Transmitter will surely appeal to those ladies of refined taste who demand equipment of the most dainty and exquisite type. Makers of the most luxuriously appointed bodies will find the Vanity Case Transmitter something new and unique. It can be especially designed to harmonize with the interior of the car in style and finish and will prove an addition of rare refinement, highly appreciated by the most particular customers.

BLANK PAGE



Flower Vase Transmitter

The Flower Vase Transmitter is designed to occupy space which is already utilized in many of the best cars, without adding to the present number of individual pieces of equipment. The flower vase itself remains stationary while the transmitter is removed for use and replaced as easily as is the case with any of the other types. When not in use the transmitter appears to be a part of the flower vase and is a very ornamental appointment.

This type of transmitter can be made to possess the individuality and quality so much desired by owners of the highest class cars. It offers to the manufacturer and body builder a feature that will prove attractive to purchasers and at the same time prove valuable in constantly creating favorable comment in connection with the builder's name.

The design and ornamentation of the Flower Vase Transmitter can be especially made to harmonize with the other equipment and the interior finish of the car. In the illustrations shown here it is impossible to do it justice. Our Engineering Department will gladly work with you in producing a design which will add to the distinctiveness of your car and to the satisfaction of the owner who takes pride in the perfect quality of its appointments.

BLANK PAGE

Plaintiff's Exhibit 33

August 29, 1924.

Mr. J. L. Spence,
Whiteland Manufacturing Co.,
1600 Chestnut Avenue,
Brooklyn, N. Y.

Dear Sir:

Your letter of August 25th, with reference to the agreement between the Klaxon Company and Stentor Electric Manufacturing Corporation, has been referred to this office for reply.

Just prior to Mr. Hollister's departure, the writer called upon him and informed him fully of the attitude of the corporation with regard to the Stentor contract. If you can find time to call at this office, I shall be very glad to go into the matter just as fully for your benefit, as I understand that you have a substantial interest in the Stentor Electric Manufacturing Corporation.

You understand, of course, that the Remy Electric Division of General Motors Corporation is entitled under the contract to manufature these goods because of its affiliation with the Klaxon Company which is a subsidiary of General Motors Corporation.

As the writer expects to leave on his vacation very shortly, it would be appreciated if you would make an appointment for the early part of next week.

Very truly yours,

CRC:MM

LEGAL DEPARTMENT.

Plaintiff's Exhibit 35

Letterhead of
GENERAL MOTORS CORPORATION
224 West 57th Street
New York, N. Y.

April 28th, 1925.

Mr. Buell Hollister,
20 Exchange Place,
New York, N. Y.

Klaxon-Stentor Agreement

Dear Mr. Hollister:

I am enclosing herewith a summary statement of the Stentor business for the first quarter of 1925. You will note that the profits are only about three percent of the "cost of manufacture", so there is no payment of royalty due you on this period.

Mr. C. E. Wilson, General Manager of Remy Electric Division, calls this "a pretty small percentage", and goes on to say:

> "It is very difficult for us to make any profit when the monthly sales drop below $5000.00. The demand for this device is continually decreasing and I do not see any hopes for any considerable profit in this business".

While the enclosed statement is not in so great detail as those previously submitted, the expense items seem to be comparable, and going back over 1924, the truth of Mr. Wilson's remark is obvious. You spoke of the increase in closed cars as inferring a broader market for this equipment, but I do not think we can properly draw that inference. The introduction of the cheaper closed model in most

lines has largely accounted for this increase, whereas the use of electric communication between the rear-seat passenger and the driver is essentially limited to the higher-priced chauffeur-driven limousine. Unless there is a permanent partition behind the driver's seat, there is no real occasion for a telephone or speaking tube. In fact, I know of a number of owners of such cars who do not use the equipment in their cars, but rather leave the glass partly open.

Of course this brings up the question of whether it is desirable to increase the prices of this equipment to the point where a similar volume of sales will produce a 30% profit. As I understand from Mr. Reuter, the business is on a competitive basis, and there is every reason to expect that an increase in price would result in losing business rather than increasing profits. From our standpoint, the only profit possible would come from increased volume, and increased volume does not seem possible.

In answer to your inquiry by telephone the other day, we do not feel that we are obligated to take on the development work necessary to apply these patents to radio equipment, or some other field, outside our own line, and we are not disposed to do so, from business reasons. Under the contract, however, there being no reservation in the license provisions, we should feel entitled to our share in the profits resulting from such a development. Naturally, such a situation presents some drawbacks to successful pioneering or financing, in the radio field.

As I have previously indicated, in our opinion the present agreement is intrinsically unprofitable to both parties, inasmuch as we are necessarily organized for volume production into which this equipment does not fit, and you are not willing apparently to accept the opinion that only a very limited market exists for it, and believe that intensive sales effort would develop a substantial

market. Under the circumstances, do you not think it would be well to try to value this business, with a view to terminating the contract by one side buying out the other? From our viewpoint, you will see that we would not be inclined to pay a great deal for your interest, as we would merely expect to discontinue the manufacture of the equipment. By the same token, we would not expect to be paid any higher price by you for the surrender of our exclusive license, which would leave you entirely free to develop the possibilities of the patent in any field.

Yours very truly,

CHARLES R. CARROLL.

Enclosure.
CRC:H

Plaintiff's Exhibit 37

Letterhead of

HASKINS & SELLS
CERTIFIED PUBLIC ACCOUNTANTS
30 Broad Street
New York

New York, April 8, 1918.

United Motors Corporation,
29 West 42nd Street, New York.

Dear Sirs:

Pursuant to engagement, we have made an examination of the office records of the Stentor Electric Manufac-

turing Company, Incorporated, Long Island City, New York, with the view of determining the percentage of profit on the various instruments sold by it.

It was found that the above Company has no books of account and no cost records to supply the desired information. This condition was explained to your Mr. Arnold and Mr. Friend, and our examination was made along lines suggested by them.

The products of the Company consist of telephone equipment for use in automobiles and ships. The selling price of the automobile equipment is $15.00 per outfit, with an increased charge for special equipment, and a slightly lower charge in some cases. The ship telephones are sold in sets made up in combination of Control Station Instruments @ $106.00, Inter-communication Station Instruments @ $105.00, and Line Station Instruments @ $70.00, for the Navy type with Instrument cases of special composition bronze. The prices for the Commercial type, ship telephones, with pressed steel cases are, $83.00 for the Control and Inter-communication Station instruments and $50.00 for the Line Station instrument.

The various parts for the instruments are bought outside and assembled by the Company, with comparatively little labor required other than for assembling, the chief item of other labor consisting of machine work on the Navy type instrument cases.

Estimates of the material and direct labor costs have been made by the Manager of the Company, and we made a partial verification of the material costs by reference to the purchase invoices on file. The shop overhead, selling and general expenses were not estimated.

The cost of the standard automobile equipment is shown to be $4.13 for material and 77¢ for labor, or a total of $4.90.

The costs of the Navy type Control and Inter-com-

munication Station instruments are almost equal, and include a bronze case, $12.95, other parts, $6.27, and labor, $40.30, or a total of $23.52.

The cost of the Navy type Line Station instrument includes a bronze case, $7.90, other parts, $4.45, and labor, $2.30, or a total of $14.65.

The pressed steel cases for the Commercial type ship telephones cost $4.90 each for all instruments, with no machine work required, and this lessens the total cost about $10,00 on the Control and Inter-communication Station instruments and $4.50 on the Line Station instruments, as compared with the Navy type.

We give below a summary showing the selling prices, and estimated material and labor costs.

		Navy Ship Type		Commercial Ship Type	
	Automobile Type	Control and Intercommunication Station Instruments	Line Station Instruments	Control and Intercommunication Station Instruments	Line Station Instruments
Selling Price,.....	$15.00	$105.00 106.00	$70.00	$83.00	$50.00
Cost (Not Including Overhead Expenses):					
Instrument Case, ...		$ 12.95	$ 7.90	$ 4.90	$ 4.90
Other Parts,....	$ 4.13	6.27	4.45	6.27	4.45
Labor, ...	.77	4.30	2.30	2.42	.80
Total,.....	$ 4.90	$ 23.52	$14.65	$13.59	$10.15

From our examination of the stock on hand we conclude that the estimated inventory submitted to you by the

Company under date of April 4, 1918, shows a total value under, rather than over, the actual value. The last item $2,000.00, designated in part as "Dead Stock", refers to brass bars, sheet bronze, wire, machine screws, etc., as distinguished from "Active Stock" consisting of completed parts ready for assembling. The Manager states that there is practically no obsolete stock on hand and the general clean appearance of the plant would seem to bear out this statement.

The Company now has unfilled orders on hand for approximately $2,500.00 for automobile equipment and $205,000.00 for Navy type ship telephones.

Yours truly,

Plaintiff's Exhibit 39

Annual report of General Motors Corporation for year ending December 31, 1925, stating that Fisher Body Corporation is "among the most important of subsidiaries of General Motors Corporation".

Plaintiff's Exhibit 40

Annual report of General Motors Corporation for year ending December 31, 1926, dated March 7, 1927, stating

> "As mentioned elsewhere in this report, during the year the assets of Fisher Body Corporation were acquired. Previous annual reports pointed

out the importance of the then Fisher Body Corporation in the activities of General Motors Corporation and emphasized the trend from the open to the closed car. During the past year this trend has been even further accentuated so far as domestic business is concerned. Moreover, the trend from the open to the closed car in the corporation's overseas activities is reflecting, although at a less rapid rate, the same general trend as the domestic market. Many benefits will accrue through the consolidation of the two properties. Operating economies of important consequence will be developed through ability to do those things which result in the lowest possible cost, many of which were impossible with the institutions operated separately. Of even greater importance is the bringing into General Motors Corporation operating organization in closer relationship the Fisher Brothers, through whose constructive ability, foresight and energy the institution bearing their name has been built up to the dominating position it now holds."

All of the stock of Fleetwood Body Corporation was owned by General Motors Corporation.

Plaintiff's Exhibit 43

Annual report dated December 31, 1928 of General Motors Corporation showing that the Fisher Body group, comprising various companies which were subsidiaries and divisions of General Motors Corporation, included the Fleetwood Body Corporation of Fleetwood, Penna.

203

Plaintiff's Exhibit 45

Letterhead of

HASKINS & SELLS

CERTIFIED PUBLIC ABBOUNTANTS

30 Broad Street

New York

October 31, 1922.

Klaxon Company,
Newark, New Jersey.

Stentor Electric Manufacturing Company,
c/o Messrs. Pyne, Kendall & Hollister,
20 Exchange Place, New York.

Dear Sirs:

In compliance with instructions from your attorneys, we have made an examination of the books and records of the Klaxon Company from which, as well as from information supplied by officers and employes of the Company, we have prepared and submit herewith, a

STATEMENT OF PROFITS DISTRIBUTABLE UNDER THE AGREEMENT BETWEEN THE KLAXON COMPANY AND THE STENTOR ELECTRIC MANUFACTURING COMPANY, INC., AND ACCUMULATED LOSSES TO BE INCLUDED IN THE COST OF MANUFACTURE (AS DEFINED BY THE AGREEMENT) FOR THE PERIOD FROM MAY 20, 1918, TO DECEMBER 31, 1918, AND FOR THE YEARS ENDED DECEMBER 31, 1919, 1920, AND 1921.

In this statement we have shown the bases used by the company and those used by us in determining the charges applicable to cost of manufacture under the agreement.

Exhibit P-45

We have not attempted to apportion the profits or losses to the parties to the agreement as we are unable to state the results by quarters, physical inventories having been taken, and consequent adjustments made in the "cost of manufacture", only as of December 31 of the respective years. For the same reason, we have not continued our statement beyond December 31, 1921.

Yours truly,

BLANK PAGE

205

Exhibit P-45

KLAXON COMPANY

STATEMENT OF PROFITS DISTRIBUTABLE UNDER THE AGREEMENT BETWEEN THE KLAXON COMPANY AND THE STENTOR ELECTRIC MANUFACTURING COMPANY, INC., AND ACCUMULATED LOSSES TO BE INCLUDED IN THE COST OF MANUFACTURE (AS DEFINED BY THE AGREEMENT) FOR THE PERIOD FROM MAY 20, 1918, TO DECEMBER 31, 1918, AND FOR THE YEARS ENDED DECEMBER 31, 1919, 1920, AND 1921

	Basis of Distribution	1918 Based Upon Klaxon Company Records	1918 as Adjusted by Haskins & Sells	1919 Based Upon Klaxon Company Records	1919 as Adjusted by Haskins & Sells	1920 Based Upon Klaxon Company Records	1920 as Adjusted by Haskins & Sells	1921 Based Upon Klaxon Company Records	1921 as Adjusted by Haskins & Sells
NET SALES OF STENTOR PRODUCT:									
Outside		$163,515.12	$163,515.12	$153,184.71	$153,184.71	$ 69,058.86	$ 69,058.86	$ 48,328.90	$ 48,328.90
Affiliated companies				1,631.68	1,631.68	24,281.36	24,281.36	14,367.23	14,367.23
Total		$163,515.12	$163,515.12	$154,816.39	$154,816.39	$ 93,340.22	$ 93,340.22	$ 62,696.13	$ 62,696.13
Ratio of sales to affiliated companies to total sales				1.1%	1.1%	26%	26%	22.9%	22.9%
COST OF MANUFACTURE (AS DEFINED BY THE AGREEMENT):									
Direct labor, direct material, and factory overhead	A	$ 87,020.78	$ 87,020.78	$ 95,054.41	$ 95,054.41	$ 69,860.80	$ 69,860.80	$ 50,511.98	$ 50,511.98
Salaries of officers	B	700.00	688.23	1,200.00	947.91	1,134.51	694.50	970.39	993.60
Salaries of general office clerks	B	1,456.54	603.44	600.00	2,246.15	572.12	2,141.68	483.81	1,070.88
Salary of "Stentor" general manager, J. L. Spence	A	1,733.20	1,733.20	3,013.20	3,013.20				
Salary and expense of special salesman, H. B. Burr	C	1,853.65		5,069.44		4,936.40		3,484.03	
Industrial division—Salaries and expenses of sales department and salesmen	D	12,240.92	8,167.14	33,124.99	32,276.01	29,383.61	9,702.79	4,433.85	7,039.20
Motor equipment division—Salaries and expenses of sales department and salesmen	E	643.97	120.05	2,388.81	1,411.77	3,452.08	4,661.10	1,711.10	2,000.62
Experimental work	F	709.22	709.22	11,371.50	6,546.72	14,183.47	7,251.32	4,216.40	1,229.13
Shipping expenses	A	989.91	989.91	1,682.50	1,682.50	1,676.89	1,676.89		
Advertising	G	893.22	1,624.98	2,598.06	3,886.57	1,289.26	2,109.07	47.22	224.70
Uncollectible accounts written off	A							118.28	118.28
Audits and appraisals	A	210.50	210.50						
Gratuitous samples	A	76.25	76.25	208.61	208.61	21.97	21.97	14.00	14.00
Legal expenses	A			611.59	611.59				
Miscellaneous selling expenses, less sundry credits	A	141.42	141.42	(102.50)	(102.50)	(317.67)	(317.67)	735.23	735.23
Total cost of manufacture		$108,669.58	$102,085.12	$156,820.61	$147,782.94	$126,193.44	$ 97,802.45	$ 66,726.29	$ 63,937.62
PROFIT		$ 54,845.54	$ 61,430.00	($ 2,004.22)	$ 7,033.45	($ 32,853.22)	($ 4,462.23)	($ 4,030.16)	($ 1,241.49)

COMPANY'S BASES FOR CHARGES:

A Direct charges.

B Arbitrary charges.

C 100% for years 1918, 1919, and 1920; 50% for year 1921.

D 2/3 for years 1918, 1919, and 1920, and 1/3 for year 1921, of total salaries and expenses of industrial division, all of which were direct charges to that division.

E 1/10 of total salaries and expenses of motor equipment division, all of which were direct charges to that division.

F Direct charges for year 1918; 2/3 of laboratory charges to industrial and motor equipment divisions for years 1919, 1920, and 1921.

G Direct charges for items billed to "Stentor" only.

These ( ) Indicate Red Figures

HASKINS & SELLS BASES FOR CHARGES:

Direct charges.

Ratio of Stentor sales to total sales of all divisions.

Included with, and prorated upon same basis as, motor equipment division (see E).

Ratio of Stentor industrial sales to total industrial division sales.

Ratio of Stentor motor equipment sales to total motor equipment division sales.

Company's basis to June 1, 1919, accepted; remainder, direct charges.

Charges directly traceable to Stentor business. (Does not include any portion of certain items aggregating $28,769.17, a part of which might be applicable to Stentor business).

Plaintiff's Exhibit 46

Letterhead of
REMY ELECTRIC COMPANY
Inter-Organization Letters Only

December 18, 1924.

ANDERSON

Attention of Accounting Dept.
Copy for: L. W. Tomlin

The following price is effective to the Rolls Royce of America, Inc. on complete Stentor Autophone Set:

Complete Set	$14.78

This price does not appear on the original list of prices for Autophone users, and should therefore be added.

G. B. STONE, Gen. Sales Mgr.
Per C. S. POLAND

CSP:RKC

Plaintiff's Exhibit 47

Letterhead of

REMY ELECTRIC COMPANY
Inter-Organization Letters Only

February 19th, 1925.

ANDERSON

J. W. Patton
Accounting Dept.

Attention of J. W. Hale.
Copy to: L. W. Tomlin

We received order from the Willoughby Company of Utica, N. Y. for five sets of Stentor Autophone equipment, which will be billed to them at $16.90 per set.

G. B. STONE, Gen. Sales Mgr.
Per C. S. POLAND

CSP:RKC

Plaintiff's Exhibit 48

Letterhead of

REMY ELECTRIC COMPANY
Inter-Organization Letters Only

April 27th, 1925.

ANDERSON

J. W. Patton,
Divisional Comptroller

Attention of J. W. Hale
Copy to: L. W. Tomlin

The following price is effective to the Ford Motor Co., Detroit, Michigan:

Stentor Autophone Set complete $14.20

G. B. STONE, Gen. Sales Mgr.
Per C. S. POLAND

CSP:RKC

Plaintiff's Exhibit 49

Letterhead of

REMY ELECTRIC COMPANY
Inter-Organization Letters Only

November 13th, 1925.

ANDERSON

B. W. Cooper,
Divisional Comptroller.

Attention of J. W. Hale.
Copy to: W. E. Hall

The following prices are effective to Healy & Co., Kenport, N. J. on Stentor Equipment: :

Receiver	B-2 #814658	$3.70
Reel	B-6 #814660	3.60
Horn	A-3 #814645	3.00
Term. Block	#814662	.50
Wire	#814663	.60
Transmitter	BN-265 #814872	5.50
		$16.90

G. B. STONE, Gen. Sales Mgr.
Per W. O. Nelson

WON:RKC

Plaintiff's Exhibit 62

Letterhead of
GENERAL MOTORS CORPORATION
224 West 57th Street
New York

March 8th, 1927.

Mr. R. L. Wilkinson, Vice President,
Klaxon Company,
Anderson, Indiana.

Dear Mr. Wilkinson:

I have just received a letter from the firm of Truesdale & Nicoll, attorneys, concerning the relations between the Klaxon Company and the Stentor Company which suggests that this matter has again been referred to a firm of attorneys in an effort to force us to comply with our obligations in this matter.

You will recall that I mentioned this matter on the occasion of your recent visit to New York, with a request that you furnish me with the statement provided for under the contract.

This will serve to renew my request and to point out the necessity of complying with our obligation to furnish statements whether or not the statements show any payments to the Stentor Company.

I would also like to have suggestions from you as to any means of terminating this agreement, if you are not interested in complying with our obligations under it. The last time the question was raised I understood that you desired to be in a position to supply certain requirements of Fisher Body Corporation, but I cannot see that this

Exhibit P-64

should any longer be a motive, if the contract will not carry its own weight.

Yours very truly,

CHARLES R. CARROLL
Legal Department.

CRC:R

Plaintiff's Exhibit 64

Letterhead of

GENERAL MOTORS CORPORATION
Inter-Organization Letters Only

To Mr. C. E. Wilson,
Delco-Remy Corporation.

Address Anderson, Indiana.

October 14th, 1927.

Please refer back to my letter of March 8th, 1927, concerning the Stentor situation, which you acknowledged on March 10th, 1927.

At the present writing I have had no further communication from any one in this connection. The attorneys for the Stentor Company are now pressing for some indication of our attitude in this matter, and I am not in any position to excuse our failure to render statements as required by the contract.

The last statements which I have seen are those of the second and third quarters of 1925. As the attorneys for

Exhibit P-65

the Stentor Company are now threatening suit for breach of contract, I feel that it is very necessary for us to meet our obligations under the contract. I have advised them it was proper for them to expect the payment of interest on overdue payments. I would accordingly thank you to compute interest upon the respective payments from the last quarter of 1925 to date.

I would thank you very much to either give this matter your personal attention, or to delegate it to some one who can be depended upon to supply us with the information required fairly promptly.

CHARLES R. CARROLL
Legal Department.

CRC:R

Plaintiff's Exhibit 65

Mr. B. W. Cooper, Resident Comptroller

October 22, 1927

Mr. Charles R. Carrol
Legal Department
General Motors Corporation
New York City

Your letter of the 14th. for the attention of Mr. C. E. Wilson has been handed to the writer for investigation and reply. I am inclosing profit and loss statements of the Stentor business for the fourth quarter of 1925, the entire year of 1926, and the first three quarters of 1927. Before making any payments of royalties it will be necessary for us to make a little further investigation of payments already made. Perhaps you could assist us some

Exhibit P-66

in this through either the records in your office or those in the office of Mr. John Thomas Smith.

I notice in the contract with the Stentor Company there is a provision that the Klaxon Company would loan to the Stentor Company approximately Eighteen Thousand Dollars ($18,000.00) to be paid back by the Stentor Company with interest from royalties. I also notice, in looking back over the years of the existence of this contract, that there had been some profitable years and some years in which there were some heavy losses. If it would be possible for you to obtain a record for me of the payments already made, it would assist me greatly.

There is also a matter relative to the patents which I am asking our Engineering Department to check up. I will endeavor to push through any and all of our investigations as rapidly as possible so that there need be no great delay in carrying out your plans.

B. W. Cooper
Resident Comptroller

BWC:MS
Incs.

Plaintiff's Exhibit 66

STENTOR CONTRACT

To: Mr. C. E. Wilson
General Manager

The insistence of the Stentor Company for payment of royalties due under their contract made originally with the Klaxon Company makes it necessary for us to decide at

this time what our actions shall be. There are three general questions which I would like to raise at this time and for which we should arrive at what we believe to be the correct answer before making any payments to the Stentor Company. The three questions are as follows:

(1) What is the amount of the royalty which is due and payable to the Stentor Company.

(2) Can the contract be cancelled upon the grounds that the product is no longer built under the patents which formed the basis for the original contract.

(3) If the contract can be cancelled could we legally continue the manufacture and sale of the product.

I am commenting in detail upon each of these three questions, giving you whatever information we have been able to dig up.

* * * * * * *

2. Can the contract be cancelled upon the grounds that the product is no longer built under the patents which formed the basis for the original contract?

Our engineering department has checked the application of the Stentor patents to the construction of the products we are now making and have advised me that there is only one small detail in the construction which comes under the Stentor patents. Furthermore, this particular construction now being used is not essential and can be changed at very small cost so that the product has nothing in its construction for which it relies on a Stentor patent. Article 17th. of the contract sets out the grounds upon which the contract can be cancelled and I believe

Exhibit P-66

that Mr. Mc Evoy should give us a decision as to whether or not the contract can be legally cancelled.

"ARTICLE SEVENTEENTH: In the event that either of the hereinafter described patents, Nos. 1,112,392 and 1,112,167 is declared invalid or substantially limited in scope by any court of competent jurisdiction, or when by reason of obsolescence of the articles covered by said patents, a net profit of fifteen (15%) per cent cannot be secured by the Klaxon Company, it shall have the right, upon thirty days written notice by registered mail to the Stentor Company, to cancel this contract and any rights herein granted shall, upon the date said cancellation becomes effective, cease and determine and shall revert to the Stentor Company free and clear from any claim on behalf of the Klaxon Company as if this agreement had not been made."

* * * * * * *

I am handing you several copies of these comments and the original copy of the Stentor contract. I hope that it will be possible for you to discuss this whole matter with the proper parties in Detroit so that we can decide what our action should be before closing our books for this year.

B. W. COOPER.
Resident Comptroller
1927

BWC:MS

Plaintiff's Exhibit 67

Letterhead of

DELCO-REMY CORPORATION
Inter-Organization Letters Only

Date December 28, 1927

Subject License Agreement between Stentor Company and Klaxon Company
From Mr. Lovett

For Attention of Mr.McEvoy

The License extends by its terms to September 29th, 1931. The only provisions for termination prior to that time are by reason of the Stentor Company itself engaging in manufacture (which is not likely to occur) or by the provisions of Article Seventeen. The pertinent portion of this Article reads thus:

> "when by reason of obsolescence of the articles covered by said patents a net profit of fifteen (15%) per cent cannot by secured by the Klaxon Company it shall have the right, upon thirty days written notice by registered mail to the Stentor Company, to cancel this contract", etc.

The profit on the business now being done, as shown by Mr. Cooper's report, is more than 15%. It seems clear therefore that we have at present no basis for cancellation of the contract. Furthermore, we cannot, by cutting prices reduce the profit to less than 15% without consent of the Stentor Company which, under Article Eighteen, must be consulted in fixing prices when the profits are less than 30%. The elimination of any detail

Exhibit P-67

of our construction which would be covered by the patents would not give us a right to cancel the agreement.

The manufacture and sale of a competing product which did not fall under the patents is forbidden by Article Twenty-Two, which reads thus:

> "During the term of this agreement and any extention hereof, the Klaxon Company agrees not to itself Manufacture or sell, nor manufacture or sell for any other party, any article, device or apparatus which would be competitive with or a substitute for any article, device or apparatus covered by this agreement without the written consent of the Stentor Company first had and obtained."

It appears therefore that up to September 29th, 1931 we cannot free ourselves from the contract except by the consent of the Stentor Company and, furthermore, that, under Article Thirteen, we must use our

> "best efforts to further the manufacture and sale of the articles covered by this agreement".

Possibly in view of the royalties which have not yet been paid and in view of the decreasing business, the Stentor Company would accept a reasonable lump sum settlement and leave us free to manufacture and sell whatever product seemed most salable.

G. A. LOVETT

Plaintiff's Exhibit 68

Letterhead of

GENERAL MOTORS CORPORATION
Inter-Organization Letters Only

TO Mr. B. W. Cooper, ADDRESS Anderson, Indiana.
Resident Comptroller,
Delco-Remy Corporation, ADDRESS

FROM

SUBJECT Stentor Agreement. April 26th, 1928.

Mr. Courtlandt Nicoll, of Shiland, Hedges, Nicoll & Pelham, called today with reference to the commencement of suit on behalf of Stentor Manufacturing Company for profits due them. Unless payment is made immediately, I believe that suit will be instituted by these people against either the Klaxon Company or General Motors Corporation, or both.

Entirely aside from this, I believe that we should meet our obligations under the contract, and I am, therefore, setting out my understanding of our subsisting liability under the agreement.

I have not the last quarter of 1923 in my file, and, therefore, am not able to state whether or not there is any liability for this period. The last payment which we have any record of is to include September 30th, 1923. A loss was sustained during 1924, so that no payment is due Stentor for that period. In 1925 a profit was realized of $7265.77. As this was in excess of 30% of the cost of manufacture as defined under the agreement, namely $33,847.38, we should pay over one-half of the profits, or the sum of $3632.88. In 1926 we made a profit of $13,183.36, which was more than 30% of the cost of manufac-

Exhibit P-71

ture, namely $35,693.62. We owe Stentor one-half of the profits, or $6591.68. In 1927 a profit was realized of $11,058.38, from which we may deduct 15% of $49,799.90, or $7469.99, leaving a balance due Stentor of $3588.39.

The sum of these three items, without interest, to which I believe the Stentor Company is entitled, is $13,812.95. I should like to have your check for this amount forthwith, so that whether suit is brought or not, we may meet our obligations under the contract, and not be in a position subject to criticism even from our own standpoint.

CHARLES R. CARROLL
Legal Department.

CRC:R

Plaintiff's Exhibit 71

September 30, 1929.

B. W. Cooper, Resident Comptroller.

Mr. Chas. R. Carroll, Legal Department,
General Motors Corporation,
New York, N. Y.

In reply to yours of September 24th: Mr. Kroeger would like to defer writing a letter to the Stentor Electric Manufacturing Company advising of the cancellation of their contract until we have had an opportunity to arrange with the Studebaker Corporation for their securing equipment from another source. You will no doubt realize that since Studebaker is one of our good customers of other production we do not want to put overselves in a position that we could not take care of their requirements until

they had had an opportunity of arranging for purchases elsewhere.

One other point on which Mr. Kroeger would like your opinion is whether or not after the cancellation of the Stentor contract we would be able to take care of the service requirements on the systems which we have built and sold? We are not particularly interested in the service from a standpoint of profit, but, we have an obligation to service all equipment we have sold.

May we have your comments on these two points?

B. W. Cooper,
Resident Comptroller.

BWC'S

Plaintiff's Exhibit 76

Memorandum Report.

KLAXON-STENTOR OPERATION

Mr. A. P. Sloan, Jr., President,
United Motors Corporation,

Dear Mr. Sloan:—

You will remember my talk with yourself and Mr. Friend during the latter part of August last year regarding the handling of "Stentor" affairs. At that time I made objection to the affairs of the company being too quickly taken out of my hands and entrusted to new members of a new organization.

This was however done—completely, and I became a member of an organization with no specific duties assigned

Exhibit P-76

to me. I wish to emphasize this point because now that I find it necessary to ask you to go over the matter, there appears to be a general disposition to somehow shift the responsibility for lack of results back to myself.

The conditions as I find them after eight months of operation under the Klaxon Organization, during which time there has been no change in the material or the labor situation, are as follows:

1. Cost of manufacture has increased at least 200%.
2. Cost of sales has increased to such an extent that it would not be possible to give it as a percentage cost of the business produced, or in prospect, and be able to justify the continued existence of the sales department as at present.
3. Production has practically stopped. At present, with orders in hand since November 30th, exceeding $100,000.00 no shipments have been made during December or January and practically none will be possible during the next thirty days.

   This particular contract which should give us a net profit of from $40,000. to $50,000 will not show a profit of one tenth of this amount.
4. Outside manufacture is now depended on to a still greater extent than it was eight months ago and at much greater expense. It is proposed and probably will be necessary to have assembly of parts work handled outside.
5. During this period no improvements have been made in methods of production, no additional facilities have been provided for manufacture, and if any definite plans have been decided on, there are no evident and outward signs of their being carried out.

Exhibit P-76

To my mind, the general condition is so unsatisfactory and the possibilities of even eventually obtaining satisfactory results are so remote under the present management, that it is my duty to use every possible effort to bring about a change. To give my approval to the present management would be to discredit the results of years of my own work, and to accept their views and plans would be to discredit the whole Stentor proposition, as originally brought to the attention of the United Motors Corporation.

I have absolute confidence in the proposition and in my own ability to carry it on successfully. I do not feel that necessarily I am the ideal person to handle it, but I do feel that it is entirely up to me to make good, both to justify the representations made to the United Motors and to serve my own interests as a stockholder.

Therefore, regardless of the views or opinions of anyone else as to my fitness for the work, I earnestly request that I be permitted to now assume the entire management of the Stentor Company as a separate organization.

I enclose copy of my final letter to Mr. McConnell on this subject, which I have gone over carefully with him. I do not of course expect his unqualified support of my plans or his acceptance of my views. Nothing, however, which can be brought out on either side can change actual facts in the case as they now stand.

Hoping sincerely that I may be given an opportunity to justify the position I have taken in this matter, I am

Very truly yours,

JLS/M

J. L. SPENCE
Jan 14th 1919

BLANK PAGE

603 **Plaintiff's Exhibit 80**

KLAXON COMPANY

GENERAL BALANCE SHEET, DECEMBER 31, 1918

—ASSETS—	Total	Klaxon Division	Stentor Division
PROPERTY, PLANT, AND EQUIPMENT:			
Land	$ 51,300.00	$ 51,300.00	
Buildings	86,743.56	86,743.56	
Machinery, Tools, Patterns, and Miscellaneous Equipment	215,588.27	206,000.66	$ 9,587.61
Power Plant Equipment	14,957.34	14,000.08	957.26
Fire and Sprinkler Equipment	6,255.70	6,222.20	33.50
Office and Laboratory Equipment	13,835.64	10,322.52	3,513.12
Automobiles	919.93	919.93	
Total	$ 389,600.44	$ 375,508.95	$ 14,091.49
Less Reserves for Depreciation	75,788.38	74,932.85	855.53
Property, Plant, and Equipment—Net	$ 313,812.06	$ 300,576.10	$ 13,235.96
PATENTS, TRADE-MARKS, AND GOOD-WILL	$1,545,129.46	$1,544,798.71	$ 330.75
Less Reserve	261,538.40	261,538.40	
Patents, Trade-Marks, and Good-Will—Net	$1,283,591.06	$1,283,260.31	$ 330.75
INVESTMENT—CAPITAL STOCK OF MANUFACTURERS LIABILITY INSURANCE COMPANY	$ 675.00	$ 675.00	
CURRENT ASSETS:			
Cash	$ 50,643.67	($ 8,203.14)	$ 58,846.81
Accounts Receivable—Customers	$ 144,987.02	$ 120,189.50	$ 24,797.52
Less:			
Reserve for Special Discount	$ 4,490.27	$ 4,490.27	
Reserve for Credit Losses	2,179.25		$ 2,179.25
Total	$ 6,669.52	$ 4,490.27	$ 2,179.25
Customers Accounts—Net	$ 138,317.50	$ 115,699.23	$ 22,618.27
Sundry Debtors	$ 8,749.79	$ 8,749.79	
Advances to Salesmen and Others	$ 1,830.00	$ 1,630.00	$ 200.00
Advances to Stentor Electric Manufacturing Company	$ 2,768.19		$ 2,768.19
Advances to United Motors Corporation	$ 3,593.00	$ 3,593.00	
Notes Receivable	$ 78.00	$ 78.00	
Finished Product, Goods in Process, Raw Materials, and Supplies	$ 291,716.63	$ 229,669.22	$ 62,047.41
Total Current Assets	$ 497,696.78	$ 351,216.10	$ 146,480.68
DEFERRED DEBIT ITEMS:			
Prepaid Insurance	$ 3,029.75	$ 2,801.23	$ 228.52
Prepaid Interest	977.74	977.74	
Efficiency Engineering	1,933.29	1,933.29	
Vacuum Tank Development	12,707.76	12,707.76	
Wheelock Development	17,145.33	17,145.33	
Manufacturing Expense in Process	143.59	143.59	
Interest, F. H. Lovell, Jr., Preferred Stock Account	1,312.50	1,312.50	
Total Deferred Debit Items	$ 37,249.96	$ 37,021.44	$ 228.52
Total	$2,133,024.86	$1,972,748.95	$ 160,275.91

—LIABILITIES—	Total	Klaxon Division	Stentor Division
PREFERRED, 7%, CUMULATIVE CAPITAL STOCK—4,993 SHARES OF $100.00 EACH	$ 499,300.00	$ 499,300.00	
Less Treasury Stock—993 shares	99,300.00	99,300.00	
Remainder—Outstanding	$ 400,000.00	$ 400,000.00	
COMMON CAPITAL STOCK—10,000 SHARES OF $100.00 EACH	$1,000,000.00	$1,000,000.00	
CURRENT LIABILITIES:			
Notes Payable	$ 87,500.00	$ 87,500.00	
Loans—United Motors Corporation	169,014.12	45,000.00	$ 124,014.12
Accounts Payable	131,151.71	122,188.19	8,963.52
Salaries and Wages Payable	3,967.83	3,779.84	187.99
Dividends Payable	4,000.50	4,000.50	
Accrued Taxes	1,606.87	1,606.87	
Total Current Liabilities	$ 397,241.03	$ 264,075.40	$ 133,165.63
SURPLUS, PER EXHIBIT "B"	$ 335,783.83	$ 308,673.55	$ 27,110.28
TOTAL	$2,133,024.86	$1,972,748.95	$ 160,275.91

( ) Indicate Red Figures

EXHIBIT "A"

Plaintiff's Exhibit 89

(1 page lithograph follows.)

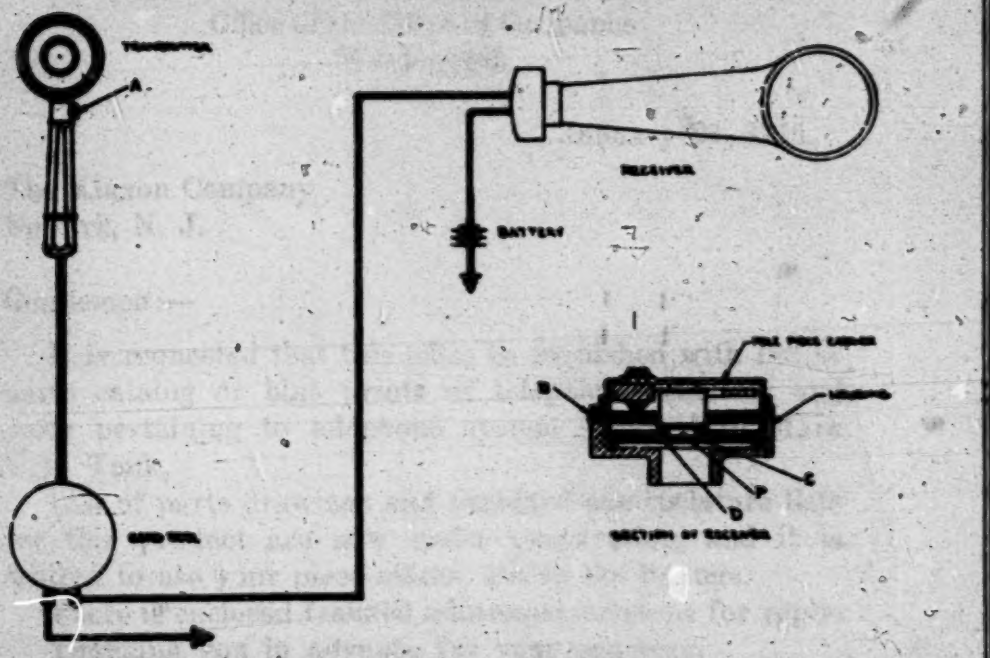
225 605

Plaintiff's Exhibit 89

Pltff's. Krogers Exh. No. 1-30 for Identification.
Louis Kingman 2/9/09.

Instructions for Use of the

STENTOR AUTOPHONE



OPERATION

(1) Press the button "A" (see diagram) on transmitter when desiring to talk to the chauffeur.

(2) Hold the transmitter in a vertical position when talking; if held in a horizontal position, transmission will be poor.

(3) Hold the transmitter close to the lips. If it is held in this manner, a sufficiently loud signal will be transmitted even though the passenger speaks in a low tone. The farther away the transmitter is held, the louder the passenger will have to speak to get the same strength of signal to the chauffeur.

The carbon particles in the transmitter may cake together after a considerable period of time. To loosen these and improve the transmission, strike the transmitter an edge against a soft object such as the palm of the hand or seat cushion.

The telephone operates on a very small amount of current. A good circuit is necessary and to insure proper performance care should be taken that all connections are tight and make a good contact. Loose connections will result in weak signals or noise in the receiver.

ADJUSTMENT

To adjust the receiver loosen set screw "B" and adjust gap "C" between the pole piece "P" and diaphragm "D" until signal is loudest. To permit this adjustment the pole piece carrier is threaded in the housing. When adjustment is obtained, position should be locked by means of set screw "B." Care should be taken that the carrier is not screwed down too far and diaphragm damaged.

Delco-Remy
Corporation
Anderson, Ind., U.S.A.

[redacted]

BLANK PAGE

Plaintiff's Exhibit 90

WAR DEPARTMENT
Office of the Chief of Ordnance
Washington

January 24, 1925.

The Klaxon Company
Newark, N. J.

Gentlemen:—

It is requested that this office be furnished with list of parts catalog or blue prints of telephone head set and parts pertaining to telephone system installed in Mark VIII Tank.

List of parts drawings and standard nomenclature lists for this product are now under preparation, and it is desired to use your piece marks, etc. in the listings.

There is enclosed franked addressed envelope for reply.

Thanking you in advance for your courtesy,

Yours very truly,

C. A. Waldmann,
C. A. WALDMANN,
Major, Ord. Dept. U. S. A.

Plaintiff's Exhibit 91

January 28, 1925.

War Department,
Office of the Chief of Ordnance,
Munitions Building,
Washington, D. C.

Attention: Major C. A. Waldman

Dear Sir:

Answering your inquiry of January 24th on drawings and catalog for parts pertaining to telephone system installed in Mark VIII Tank. I regret to inform you that the Klaxon Company went out of production on this equipment sometime before it was taken over by this Company.

We therefore have no drawings on these parts and all we do have are a few old parts which we do not know much about.

If you still desire this information, I will endeavor to get in touch with the parties who were connected with the manufacture of them and obtain the information for you.

Very truly yours,

REMY ELECTRIC COMPANY,
Engineering Department.

LOP.EKW

Plaintiff's Exhibit 95

Letterhead of

DELCO REMY CORPORATION

Copy

October 18th, 1928

Stentor Transmitters
Mr. O. Lee Harrison
Mr. R. M. Critchfield
CC—Mr. John Hughel

Critchfield 6—28
Norman E. Metcalf
2/10/39

I have yours of October 17th. I presume Mr. White told you this stentor transmitter was taken from Mr. Will Fisher's new car. Unfortunately this one went bad, as well as the one Fisher Body Company had finished for Mr. Sloan's car.

I appreciate the fact that the transmitter and receiver should be checked up together, but it is a rather difficult matter for us to get the receiver from Mr. Fisher's car when he gave the transmitter to Mr. Shillady of the Fisher Body Company and Mr. Shillady turned it over to us, and at the same time told us just what he thought of our methods of manufacture.

To be perfectly frank with you, standing on the outside looking in, it seems that no one in the Delco-Remy Organization has made it his particular job to see that stentor phone equipment is built as it should be. Since I have been with the Delco-Remy Corporation, this equipment has always seemed to me to be more or less of an orphan and I think this condition applies to the Sales Department as well as any of the other departments.

Exhibit P-98

We should get together and decide whether we are going to do this job as it should be done or discontinue manufacturing.

O. LEE HARRISON
O. LEE HARRISON

EB

Plaintiff's Exhibit 98

Letterhead of

KLAXON COMPANY
NEW YORK, NEW YORK

Industrial Division
33 West 42nd St.
September 28th 1918.

NAVY DEPARTMENT,
Bureau of Steam Engineering,
17th & B Sts., N.W.,
Washington, D.C.

Re: KLAXON-STENTOR Loud Speaking Telephones.

Gentlemen:

In reference to the sample telephones which we delivered to your Fire Control Test Laboratory on the 25th instant for test.

Thru error these instruments were adjusted so that the current consumption of the two was within the limit which you specify as permissible for one instrument. Naturally therefore the sound volume was considerably below what it should have been.

Our instruments may be adjusted to keep the current

within the limit which you specify and at the same time give excellent clearness and sound volume. We are therefore arranging to deliver to your Laboratory, a replacing set of instruments that will utilize more fully the current lea-way permitted by your specifications. These will go forward within the very next few days.

We are also making certain mechanical improvements that were suggested by the writers conversation with Lieut. Mason and with Mr. Cockerille. As certain of these changes will require some little work, we would greatly appreciate your advice as to how much time we may have in making these changes, so that the samples which we submit will bear these improvements which we are certain will appeal favorably to the Bureau.

Thanking you kindly for your advice upon this point, we are,

Respectfully Yours,

KLAXON COMPANY,
P. M. FARMER,
Industrial Division.

PMF/S

Plaintiff's Exhibit 100

MEMORANDUM

Dictated by Irving M. Obrieght,
April 8th, 1919.

The following memorandum of authorities is based on the following statements of fact:

(1) The Stentor Company and the Klaxon Company entered into an agreement on May 20th, 1918.

Exhibit P-100

(2) The Stentor Company represented in its agreement:

> "WHEREAS the said Stentor Company is at the present time engaged in the business of manufacturing the devices covered by said patents, and is the owner of property situated at its plant in Long Island City, including materials, stock, machinery, contracts, leases and accounts receivable, a schedule whereof is annexed hereto, marked "B" and made a part hereof;"

There were other representations of the same character.

(3) The Klaxon Company never investigated the patents, and never had an opportunity to see the pending applications until very recently, and then only after considerable efforts to secure the same.

(4) The device manufactured by the Stentor Company and the device taken over by the agreement by the Klaxon Company were not covered by said patents.

(5) The Klaxon Company relied upon the representations of the Stentor Company in this regard.

(6) The Klaxon Company will tender back the various assets received from the Stentor Company, if such had been received.

In Buffalo Rubber Mfg. Co. v. Batavia Rubber Co., 90 Misc. Rep. 418, 153 N. Y. Sup. 779, the Court held:

> "Where plaintiff assigned to defendant its right to manufacture certain tires under an application for letters patent, then said to be pending, but which had been in fact denied, and the application dismissed, the defendant's contract to pay royalties was unenforceable, as without consideration.

"Where plaintiff's president, in making a contract that defendant giving the right to manufacture a certain tire upon payment of royalties, represented that an application for letter patent covering such tire was pending, while such application had in fact been declared abandoned by the Patent Office, the good faith of the president in making such representations did not preclude the defendant, upon discovering the facts, from having a rescission of the contract; such false statements, independent of any knowledge of their falsity, being sufficient ground in equity for the rescission of any contract induced thereby.

"Where the agent of a licensee learned in February that the licensor's application for letters patent covering the device had been rejected, and the application declared abandoned, the payment of royalties up to the following August did not preclude the licensee from recovering them, in the absence of any element of estoppel in the case; the licensor being in no wise prejudiced, since the licensee had reasonable time after the discovery of the facts to investigate and determine the rights and applications of the parties."

The Court also held that the defendant had the right to use the word "security", which was formerly used by the plaintiff, on the ground that the word was descriptive.

Counsel have informed me that this case was not appealed.

In Dutchess Tool Co. v. Kolb, 60 N. Y. Sup. 94, 70 N. Y. Sup. 1138, the Appellate Division for the Second Department held:

"Where a manufacturing company contracted with the owner of letters patent to pay a royalty

to manufacture a patented article, which they never manufactured, but instead manufactured an article not covered by the letters patent, but used the name of the patentee on it, and later notified the owner of the letters patent that the patented article would no longer be made under a royalty, and continued to manufacture the article not patented and put it on the market under another name, the company is not liable for royalties.

"To create a liability for royalties, the licensee must have not only an apparently valid patent, but the licensee must make and sell the article patented."

In its opinion, the Court stated:

"As was stated in the case of Saxton v. Dodge, 57 Barb. 84, 113:

'If the payees of the note had no such exclusive right, the defendants acquired nothing by the license. They merely obtained a license to do what they had the same right to do without any license. The license conferred no right, for the licensee had none to confer * * *. The true rule, I think, is that, where a party gets nothing by the contract sought to be enforced against him—neither title nor possession of property,—he is not estopped from setting up his defense.'

See Hayne v. Maltby, 3 Term R. 438, 441.

In the case of Marston v. Swett, 82 N. Y. 526, 533, the Court lay down the rule that:

'Where the patent is apparently valid and in force, the party using it, receiving the benefit of

its supposed validity, is liable for royalties agreed to be paid, and cannot set up as a defense the acual invalidity of the patent. The reasons for the rule are that the party has got what he bargained for; that he cannot be allowed at the same time to affirm and disaffirm the patent (or, as Lord Kenyon puts it, 'blow hot and cold' with reference to the same transaction). While the manufacture goes on under such an apparently valid patent', continues the Court, 'it is presumed to be under and in accordance with the agreement to pay royalties. If the manufacturer does not so intend, and choses to make the patented article, not under the patent, but in hostility to it, he must give notice of that intention, in order that the presumption may not attach or the patentee be misled. But if the patent is annulled or destroyed by due and effective legal proceedings and priority of invention, and a patent is awarded to another, no notice is necessary, for there is no presumption or inference of manufacture under a patent judicially void and annulled.'

"In the case at bar, while there is no reason to doubt the validity of the patent granted to Mr. Kuhrkop, it is very certain that it does not cover the oven door manufactured and sold by the plaintiff under the name of the 'Vienna Door', and the notice of the plaintiff that it would manufacture no more doors under the agreement was sufficient to relieve it of any liability to the defendant. The patent would be of no protection to the plaintiff; the goods which it has put upon the market are not sold under any pretense that they are protected by letters patent; they are not within the specifications contained in the patent; and the defendant,

having given the plaintiff no valuable consideration, is not in a position to insist upon an enforcement of the contract under which the plaintiff was originally licensed. It is necessary, not only that the licensor should have an apparently valid patent, but that the licensee should make and sell the article patented, in order to create a liability for royalties. The patentee of a rowing machine has no authority to collect royalties upon a patented oar-lock, nor has the owner of a patent upon an improved bakers' oven a right to collect a royalty upon an oven door, which is not made under the specifications of the patent. The patent, insofar as it relates to the door, is upon 'the combination of oven door' with balance weight, and' with gas pipe,s, and cock,r 'and not merely the oven door, such as is in common use in bakers' ovens."

It is note-worthy that in this case, the Dutchess Tool Company paid royalties for quite some time.

"In Marston v. Swett, 82 N. Y. Fed. 526, the Court held:

> "Parties interested in a patent that they believed valid entered into an agreement concerning it, in which agreement royalties were stipulated to be paid by one of the parties. A decision was afterwards made in the Patent Office in an interference suit, declaring another to be the inventor, and directing the issue of the patent to him. HELD, that no royalties could be recovered under the agreement after the date of the decision."

In Herzog v. Heyman, 151 N. Y. 587, the Court held:

> "The vendee of a patent may defend an action for the purchase price (which may consist of royal-

ties) by showing a failure of consideration through the invalidity of the patent.

"Judgment of a court of competent jurisdiction, rendered against the vendee of a patent in an action to which the vendor was not a party, adjudging the patent to be an infringement and compelling the vendee to account to the owners of another patent for damages upon all sales by him of the infringing article, constitutes a prima facie defense to an action for the purchase price of the infringing patent.

"Very clear evidence is requisite to permit a contract for the sale of letters patent to be construed, not as calling for a valid patent, but as contemplating a transfer of the letters merely, irrespective of whether they are valid or not, with an assumption by the vendee of the risk of their invalidity."

Many other cases can be cited along this line.

An action may be maintained by the buyer of a patent right for misrepresentations of what was covered by a patent or what was not covered by an earlier patent. In such case, a buyer need not examine the records of the Patent Office.

Smith on the Law of Fraud, Sec. 215.
David v. Park, 103 Mass. 501.

McKee v. Eaton, 26 Kan. 226, Petition for rescission held to state cause of action. Patent worthless because of prior patent. (Cited 103 Mass. 501).

Rose v. Hurley, 39 Ind. 77, suit on note for patent right. Plaintiff exhibited churn and said was covered by patents. Defense of fraud on ground that patent rights covered only part of churn. Held good defense.

Exhibit P-100

Hamilton v. Park Co., 125 Mich. 72. Suit for royalties. Contract was invalid for lack of subject-matter. Patent issued on limited claims. Does not affect the situation that structure in a minor detail is covered by the patent.

Hargraves v. Pitkin Co., 19 R. I. 426. Suit for purchase of patent. Specification not same as when purchased. Limitation of scope.

Angier v. Eaton Co., 98 Pa. 594. Suit for royalty. Judgment for defendant. Defendant did not get exclusive license. Was sued on outstanding prior patent. Suit discontinued. Court compared patents and found prior patent as dominating.

Edison Co. v. Thackara Co., 167 Pa. 530. Defendant may show that because of prior patent, he is not securing the monopoly for which he agreed to pay royalty.

Harlow v. Putnam, 124 Mass. 553. Did not have to pay royalty. Patent void for want of novelty. Failure of consideration.

License annulled for fraudulent representations of the salability of the invention. Hall v. Field, 76 Va. 594. Robinson on Patents, Sec. 1245.

Sale of Formula. Found worthless, failure of consideration. Wells v. Gries, 118 Ga. 566.

The United States Supreme Court has found an assignment invalid for entire failure of consideration.

Railroad Co. v. Trimble, 77 U. S. 367, 381, 383.

The following shows the Court's attitude in sale or license of patent rights involving fraud and deceit:

In Gardner v. Trenary, 65 Iowa 646, it was held that the statements amounted to a warranty; the invention was worthless. When the device was shown a weight was used to make it work. The sale was set aside. It was held no defense that victim was easily deceived.

In Braley v. Powers, 92 Me. 203, the plaintiff received

a verdict for $500.00 on suit against the patentee. The plaintiff had purchased patent rights on belt buckles and the fraud was found in mis-stating the cost of manufacturing the same.

In Hicks v. Stevens, 121 Ill. 186, the Court set aside the bill of sale of a patent on a boiler regulator on the ground of mis-statements in defendant's catalogue. The Court held that in an Equity suit the seller does not have to have knowledge of the fraud.

In Neil v. Cummings, 75 Ill. 170, the Court cancelled notes as a cloud on title. The notes were given for certain patent rights and it seemed that the patent and the territory were worthless.

In Page v. Dickerson, 28 Wis. 694, the plaintiff sued for a rescission of contract and return of personal property. The plaintiff recovered. He had purchased a ¼ interest in a method of making steel that proved to have no utility.

In Gaty v. Holcomb, 44 Ark. 216, contract of sale of patent rights in a stump puller were set aside. The devices made under the patent were not light enough and they did not work.

In Iowa Co. v. American Co., 32 Fed. 735, the plaintiff secured a license from the defendant to sell patented heaters, which defendant was to manufacture. Plaintiff paid for the license. The heaters were never delivered and the invention was without utility. Plaintiff was allowed to recover.

In Nelson v. Wood, 62 Ala. 175, plaintiff sought a rescission of contract for the purchase of certain patent rights involving a tanning process. The mis-statements consisted in the length of time the process would take and the quantity of product that would result. Rescission was granted. In 74 Ala. Page 90, a recovery was allowed on a warranty case of false representations of the material used in a patented churn.

Exhibit P-100

In Allin v. Millison, 72 Ill. 201, the verdict for plaintiff for the amount paid by him for an interest in a patent covering match safes. The fraud and deceit consisted in the agent's misrepresentations of the commercial possibilities of the patented device.

In Vulcan Metals Co. v. Simmons Mfg. Co., 248 Fed. 853, 857 the Court found that there was a cause of action shown in deceit over a statement that no devices had been sold although they really had been. They found however no deceit in "puff talk" as to the value of the invention. I have looked into the records and briefs and think that so far as the Vulcan Co. was concerned that the case could have been presented in a stronger fashion with different results as to the first ground.

In the following cases, the court held that in suits on notes given for the purchase price of patent rights, and that if the device was worthless, the defendants could avail themselves of the failure of consideration shown by such fraud and deceit:

Nettograph Machine Co. v. Brown, 28 Okla. 436, 439.
Pacific Works v. Newhall, 34 Conn. 67.
Mooklar v. Lewis, 40 Ind. 1.
Lester v. Palmer, 86 Mass. 145.
Bierce v. Stocking, 77 Mass. 174.
Clough v. Patrick, 37 Vt. 421, 426.
Dickinson v. Hall, 31 Mass. 217.
Rowe v. Blanchard, 18 Wis. 441.

In Dickinson v. Hall, the result was arrived at even though there was a warranty that the patent was valid.

Plaintiff's Exhibit 101

The selling of articles under the Stentor-Klaxon Co. license agreement puts the Klaxon Co. in this difficult position.

(1) One of the valuable assets, is the right to mark the device patented, yet Klaxon would be liable for a penalty under U. S. Rev. Statutes Sec. 4900 for false marking if it marks the devices patented under the Spense patents, because these patents do not cover the article.

(2) The Klaxon Company sells all such articles with an implied warranty that they do not infringe prior patents.

National Co. v. Gotham, 125 App. Div. 101.
Deforest Co. v. Standard Oil Co. 238 Fed. 346.

This is a hazardous thing because the Klaxon Co. is making a device under a license where the patent rights do not cover the articles made. It may have to protect and save harmless its own customers from actions and recoveries by other patentees.



Plaintiff's Exhibit 106

Letterhead of

GENERAL MOTORS CORPORATION
1764 Broadway
New York, N. Y.

April 18, 1919.

Please address reply to
33 West 42nd Street
New York, N. Y.

Subject
5C—151
Spence-Stentor
Patent Situation.

George C. Dean, Esq.,
55 Liberty Street,
New York, N. Y.

Dear Sir:

This will confirm the decisions arrived at in our conference yesterday on the Spence-Stentor Patent Situation.

You of course know that we want to approach this in a friendly and business-like way, and don't want our first conference with Mr. Danforth and Mr. Hollister to have any legal aspect.

With this in mind you are to submit report to us amplifying the first part of your letter of April 3rd, giving patent numbers and dates and general information covering the whole situation.

Mr. P. M. Farmer of the Klaxon Company is to submit a report on the devices which they are manufacturing at the present time in the Stentor Division of the Klaxon

Company, showing the relation of the present product to the patents which Mr. Spence contracted with the Klaxon Company for.

Mr. E. Berg will submit report on what they have run against in the commercial end of the business and their experience with apparatus which was sold by the Stentor Company prior to our taking it over.

The Industrial Department has a lot of information on that side of it which will be very useful in the conference that Mr. McConnell and the writer will have with Mr. Danforth and Mr. Hollister.

It is highly important that we have these reports at once, so kindly supply them to us with as little delay as possible.

Yours very truly,

O. C. FRIEND

OCF-AFS

Plaintiff's Exhibit 107

Letterhead of

KLAXON COMPANY
New York, New York

Industrial Division
33 West 42nd St.
April 18, 1919.

Mr. George Cooper Dean,
55 Liberty Street,
New York, N. Y.

Dear Sir:

Attached I am sending you brief outline of the Stentor products commercial value as we have found it in our work.

While our files and records contain a great deal of detailed information on this subject, it is my understanding that the attached outline will serve your purpose for the time being.

Yours very truly,

E. Berg
Manager
Industrial Division

E. Berg:VR
Enclosure:
Brief Outline

Plaintiff's Exhibit 109

Mr. J. L. Spence E. Berg:FC Dec. 17, 1918.

MARINE APPLICATIONS OF KLAXON-STENTOR LOUD SPEAKING TELEPHONES.

As you unquestionably appreciate the signing of the Armistice has played great havoc in the Marine Field.

The private shipyards as well as shipyards operating as agents for the Emergency Fleet Corporation (U. S. Shipping Board) are all, so to speak, up in the air in reference to future building programmes.

This condition has resulted in cancellations of orders which the shipyards had placed with us for Klaxon-Stentor Loud Speaking Telephones.

Upon a preliminary investigation of this matter we find that some shipyard officials are of the opinion that Loud Speaking Telephones were purely a war measure and that no more Loud Speaking Telephones will be required in the future on any ships outside of the Navy.

It is also the opinion of these officials that all the Loud Speaking Telephones at present installed on merchant ships, troop transports, Freighters, etc., will be removed and returned to the Navy—the Loud Speaking Telephones to be replaced by either voice tubes or Holtzer-Cabot telephones.

On the surface this looks like a pretty dark and gloomy outlook doesn't it.

If we were to be guided by the opinion of some of these shipyard officials there wouldn't be much hope of us get-

ting more business from the shipyards or shipbuilders or out of the Marine Field in general.

But—frankly I do not believe it.

We have got an excellent Loud Speaking Telephone remarkably suitable for marine use. We have got a highly efficient Loud Speaking Telephone which from a standpoint of convenience, economy and efficiency surpasses any other intercommunication equipment we know of

And we have got the entire Marine Field open for us.

In other words, it is just up to us to find the proper applications of our equipment. It is up to us to go and investigate and ascertain the conditions under which the Klaxon-Stentor Loud Speaking Telephones will prove themselves superior to any present equipment used.

Personally I am confident that a little investigation of this matter will disclose to us a number of hitherto unthought of applications and that we can build up a large and profitable business in Marine Intercommunication Equipment outside of the Navy Department or other branches of the U. S. Government.

The present condition presents to us an opportunity to go out and do some real constructive work and to show what stuff is in us.

As your part in solving this riddle I would ask you to please get in touch with whomever you might think could give you some lines on the possibilities for applications of our material in the Merchants Marine Field and who could generally suggest to you out-of-door installations which on board passenger or freight steamships would prove economical, efficient and convenient.

Exhibit P-123

By tackling the problem in this manner I am sure that we will be able to work up a business which will be a credit to you and us.

Please let me have your report on this matter at your very earliest convenience.

Plaintiff's Exhibit 123

April 3rd, 1919.

O. C. Friend, Esq.,
United Motors Section,
33 West 42nd Street,
New York City.

Dear Mr. Friend:

Spence-Stentor

I have carefully considered the forms of telephone receiver and telephone transmitter shown and demonstrated to me by Mr. Farmer; also the navy transmitter receiver set as described to me by him; and have superficially considered the wire systems employed; and it looks as if little if anything which you are making and marketing is covered by any of the Spence patents or applications.

Receiver and Transmitter: In my opinion the commercial devices do not resemble even remotely the devices of the Spence applications and patents. Those features of the former Spence apparatus which Mr. Farmer has retained are parts which Mr. Spence was accustomed to buy from a Buffalo manufacturer and which Mr. Farmer tells me embody features so old that any patents therefor expired before the Buffalo man went into the manufac-

Exhibit P-123

ture. Whatever novelty there is in the present devices seems to be patentable to you rather than to Spence.

Throat Contact Telephone Transmitter: There seems to be some slight novelty in the form of microphone employed in this device but Mr. Farmer tells me that this microphone was devised and is now being manufactured by a third party. Spence has an application for a throat transmitter but the claims are all limited to the special form of microphone radically different from the one you use. Spence made broad claims for the broad principle of transmitting by contact with the throat but he cancelled these claims upon citation of patents showing the idea to be old.

Transmitter and Receiver Set: I have not seen the set but Mr. Farmer described it to me and we both agreed it was substantially anticipated by a prior patent cited by the Patent Office. Moreover, Mr. MacKaye in telephone conversation admitted the same thing and told me that he overlooked the patent referred to or he never would have filed the application.

Wire Systems: I have not thoroughly examined the wire systems but I know you are not using the wire systems set forth in two of the Spence applications and I know that the system you are using is so simple that it cannot possibly be new or patentable.

In view of the fact that you are rendering royalty statements and as I understand it paying large royalties on the above devices, it seems to me highly important to know just what has been done and what can be done under the Stentor license agreement.

In article first, Stentor agrees to sell all assets and property of every kind including good will, except letters patent and trade-name Stentor. The agreement is that this should be done by good and sufficient instruments of title. Has this agreement ever been carried out and are you now holders of the legal title "by good and sufficient instruments"?

Exhibit P-123

In Article Tenth, you agree to pay for these assets. Have you done so?

Article second grants a license under present and future patents but you are not exercising this license.

Article fifth gives you a license to use the trade-name Stentor and also requires you to use that name. I presume you are doing so but would like this verified.

In article eleventh you agree to pay for the "articles manufactured and sold under the patents licensed hereunder". I understand that you have paid royalties under this paragraph and have by implication admitted that the patents cover the devices you are making but even so your action in this respect is obviously one of two things, either the result of an innocent mistake or the result of fraudulent misrepresentations by the licensor.

This article clearly does not require you to pay royalties on devices yet unpatented nor does it require you to pay any royalties for the use of the name Stentor. Article twentieth however, forbids you to make any devices "competitive with or a substitute for" those covered by your license, yet the devices they made themselves and sold to you and taught you to make as well as those you are now making are not covered by the license they granted you in article first.

Such a situation ought not to be allowed to run long without a show-down of some kind, but before taking any steps or giving any advice, it is very important for me to know first whether you have yet acquired the legal title to the assets mentioned in article first; if not whether you wish to acquire such title and generally whether it is best business policy to break loose from Stentor and make your own apparatus in your own way or to continue to work under Stentor name and good will.

It would be a good plan to get together all facts which would have any bearing on the situation so I have annexed a memorandum of questions which are pertinent

Exhibit P-124

and the answers to which should be considered before deciding just what to do and when to do it.

Very truly yours,

Plaintiff's Exhibit 124

Questions to be Answered in Connection with Agreement Between Stentor Electric Mfg. Co. and Klaxon Co., Dated May 30, 1918.

Matters Prior to Entering into Agreement:

1—In the second "Whereas" clause, the Stentor Co. represents that it is at the present time engaged in the business of manufacturing devices covered by said patents. Have you any of said devices?

2—Were the instruments marked patented by the Stentor Co. prior to the selling, and if so, what patent numbers were on the same?

3—Are they the same that Mr. Farmer showed me?

4—Were there any other representations that the devices were covered by said patents or said applications?

5—Was the Klaxon Co. assured as to the patent situation?

6—What reliance did the Klaxon Co. place upon such representations?

7—Did the Klaxon Co. investigate the patent situation prior to May 20, 1918?

8—If so, when?

Exhibit P-124

9—When could the Klaxon Co. first have secure access to the pending applications? Spence refused to give us powers to inspect for nearly a month. Why was this?

10—Were there any affirmative acts on the Stentor Electric Mfg. Co's or Mr. Spence's part in concealment of the fact that the devices were not covered by the Stentor Co.'s patent rights?

Performance Under the Agreement of May 20th, 1918.

11—When did you start to perform under the agreement?

12—What steps were taken?

13—Did you take over the assets covered by Article First?

14—When?

15—How much was paid for them?

16—What firm appraised the assets? (Article Tenth)

17—Have you paid for such assets, as provided by Article Tenth?

18—If so, how much?

19—If you have not acquired title to the assets, do you wish to acquire such title?

20—Is it good business policy to break loose from Stentor and made your own apparatus in your own way, or to continue to work under Stentor's name and goodwill?

21—How many instruments have been sold?

22—Were any royalties paid; if so, how much?

23—When were they paid?

24—Were royalty statements prepared?

Exhibit P-124

25—If so, copies of them should also be considered.

26—Were the instruments marked under the patents by the Klaxon Co.? If so, how? Did they bear the name "Stentor"? (Article Fifth)

27—Was the agreement of May 20, 1918, drawn by the attorneys of the Stentor Co., or of the Klaxon Company, as the rule is frequently invoked that agreements are construed most strongly against the parties drafting them?

28—Has Mr. Spence been employed under Article Nineteenth of the agreement?

29—If he has been discharged, for what reasons, and has he made any complaint in connection with the same? Do you know if he has any other inventions not applied for covering the instruments that could be assigned to the Stentor Co. under Article Fourth?

30—Can articles covered by patents be considered "obsolescent" and not give a profit of 15%, to permit a termination under Article Seventeenth?

31—Have any other patents or license belonging to the Stentor Co. come to your attention?

32—Would the use of the name "Stentor" be an asset?

33—What reasons would you give speaking as a business man, not as a lawyer, for now refusing to pay royalties or to seek a rescission in view of the fact that the agreement was entered on May 20, 1918?

34—If you sought to terminate the agreement and assets have passed, could you return the assets in the same condition as on May 20, 1918, or whenever they were transferred?

35—Was there any fraud in connection with the assets?

36—Were they inferior to what you expected to get, or unsuitable for the purpose for which they were secured?

Exhibit P-125

37—What correspondence have you had in connection with this matter? We should see all such correspondence.

General Matters to be Considered:

38—How different are the devices made by the Klaxon Co. from those of the Stentor Co.?

39—Are applications to be filed for inventions made in your factory on such devices? Does Spence know about any Klaxon Co. improvements?

40—Does not Article Twenty prevent the sale of any devices of this character by the Klaxon Co.?

Plaintiff's Exhibit 125

Letterhead of

GENERAL MOTORS CORPORATION
1764 Broadway
New York, N. Y.

April 3, 1919.

Please address reply to
33 West 42nd Street
New York, N. Y.

Subject
5C — 151
Patent Situation.

George C. Dean, Esq.,
55 Liberty Street,
New York, N. Y.

Dear Sir:

This will acknowledge receipt of yours of the 28th ultimo on the Spence-Stentor Patent situation in which

Exhibit P-125

you advise that you have received from the Stentor Electric Manufacturing Company's attorney, Mr. MacKaye the papers relative to the patents and patent applications.

It is noted that these papers included five applications filed within the last year which were not mentioned in the schedule annexed to the contract.

This will also confirm the discussion you had with Mr. McConnell and Mr. Friend on Tuesday, the 1st, at which time it was agreed that Mr. McConnell would put his Mr. Farmer and Mr. Maby in touch with you and confer on just what apparatus was being made so that you could check up the patents and see whether or not they were in conformity thereto, and whether or not any of the patents and applications which were turned over to us by the Stentor Electric Manufacturing Company were being used by the Klaxon Company in their manufacture of the telephone devices.

You were also to check up carefully the throat transmitter patent which seems to be different from the article which we found the Stentor Company selling.

Copies of this correspondence are going to Mr. McConnell in order to keep him fully posted.

Please keep after Mr. McConnell, Mr. Farmer and Mr. Maby so that we can get somewhere in this situation, keeping this office posted on the progress made.

Thanking you, we are

Yours very truly,

O. C. FRIEND
United Motors Section.

OCF-AFS

Plaintiff's Exhibit 126

April 4th, 1919.

Subject
5C — 151
Spence-Stentor, Patent Situation:

O. C. Friend, Esq.,
United Motors Section,
33 West 42nd Street,
New York City.

Dear Mr. Friend:

The matters referred to in your letter of April 3rd have been covered in our letter of the same date.

I feel that answers to my memorandum of questions should not be delayed and rather than have the questions take their regular course through various departments, it seems to me it would be very advisable to have our Mr. Obrieght follow them up with personal cross examination of each of the witnesses, as he is well experienced and very expert both in handling the law and the fact witnesses in cases of this kind. I may add that our great success in handling law and equity controversies and litigation of this kind has been largely due to his thoroughness and skill in collecting and handling the facts of each case.

While we may have very definite impressions of what we can do, it would be unwise to decide what we will do until we are quite certain as to all the alternatives we could expect to get away with if we tried them.

Very truly yours,

Plaintiff's Exhibit 127

LAW OFFICES OF
GEORGE COOPER DEAN
Liberty Tower
55 Liberty Street, New York

George Cooper Dean
Irving M. Obrieght
Clair W. Fairbank

Telephone 5250 Cortlandt
Cable "GECDEAN"

April 7th, 1919.

Subject
5C — 151
Spence—Stentor Patent Situation.

O. C. Friend, Esq.,
United Motors Section,
33 West 42nd Street,
New York City.

Dear Mr. Friend:

I note that you will arrange for a conference next Wednesday after Mr. McConnell's return.

Facts already at hand make me quite optimistic that when we get them all, we can fit them to the law in such a way as to make a good case against Stentor. If we can do that we will doubtless be able to force a satisfactory settlement without suit. Of course, it is very fortunate to have two of the parties on the other side broad minded and fair but even so, any man, however fair, is easier to deal with when you have a good substantial cause of action against him.

Very truly yours,

Plaintiff's Exhibit 132

Letterhead of

KLAXON COMPANY
Newark, N. J.

October 14, 1919.

Mr. George Cooper Dean,
55 Liberty Street,
New York, N. Y.

Dear Mr. Dean:

I am in receipt of your letter of October 8th and in reply would advise that immediately upon receipt of your letter of October 7th I referred the matter to our Engineering Department for a report and I am just in receipt in receipt of the same.

As a result of their report I am writing you to definitely advise that we do not care to prosecute either #241141 or #251069.

As I understand the situation, we are operating under a license of the Stentor Company. The Stentor Company handle the patents and in accordance with my understanding Mr. Mackaye should bring such matters to their attention. If they do not care to act the responsibility is theirs. The situation is probably somewhat muddled at the present time.

We are negotiating for a reversal of this contract and I will endeavor to see that this subject is given proper consideration in the new draft. In the meantime I do not feel that any interests are suffering.

Exhibit P-133

Should any developments come up to your mind that seem important enough to demand immediate attention if you will get in touch with me I will be very glad to take such action as may be necessary.

Very truly yours,

D. A. McConnell,
President.

D. A. McConnell....G

Plaintiff's Exhibit 133

October 16th, 1919.

Harold S. MacKaye, Esq.,
50 Church Street,
New York City.

Dear Mr. MacKaye:

Mr. McConnell advises me that the Klaxon Company does not care to prosecute application Serial No. 241,141 or Serial No. 251,069. He says:

> "As I understand the situation, we are operating under a license of the Stentor Company. The Stentor Company handle the patents and in accordance with my understanding, Mr. McKaye should bring such matters to their attention. If they do not care to act the responsibility is theirs."

Very truly yours,

Plaintiff's Exhibit 147

Aug 1 1917

To: Bureau of Steam Engineering:
Subject: Loud speaking Telephones.
Reference: (a) Bu. S.E. Let. #199588-717-I Oct. 10/16.
Enclosure: 3.

1. There is forwarded herewith, 1 set of Vandykes and 2 sets of blueprints of report #272, covering tests conducted in this Yard in compliance with reference (a) on a loud speaking telephone system submitted by the Stentor Electric Mfg. Co., Inc. of #126 Fifth Avenue, New York City, N. Y.

2. In view of the unfavorable results of the preliminary test, it is recommended that the Stentor system in its present stage of development, be disapproved for Naval Service.

G. E. BUDD

Plaintiff's Exhibit 148

UNITED STATES NAVY YARD

New York, N. Y.

Sep 26 1917

From: Industrial Manager, New York.
To: Bureau of Steam Engineering.
Subject: Stentor type loud-speaking telephones for transports.
Enclosure: 1.

1. There is forwarded herewith, for the Bureau's information, a copy of a report of inspection made by the Stentor Electric Co. on various transports.

2. This type of telephone is giving satisfactory service at the present time. It is considered advisable, however, in future equipment that the boxes containing the telephones be made of non-corrosive material, and that the master stations be made in accordance with the latest type which the Stentor Co. have recently developed, which does not necessitate the opening of the door, making it possible to make master stations of watertight construction.

G. E. Budd

Plaintiff's Exhibit 148A

Letterhead of

STENTOR ELECTRIC MANUFACTURING CO., INC.
126 Fifth Avenue, New York

September 20th, 1917.

Electrical Department,
Navy Yard,
Brooklyn, New York.
Attention of Lieut. M. A. Libbey.

Gentlemen;—

As requested by your office, we submit herewith report of inspection on "Stentor" Telephone Sets as installed on board ships.

These reports have been somewhat delayed due to the fact that we wished to include, as far as possible, ships which had made a trip to Europe and back and on which we could expect to find such defects as would result from actual service conditions. These results, as submitted by our inspector, are as follows;—

Pastories

On the first trip the sets installed were in non-watertight cases and the mounting of the keys were not sufficiently rigid. The buzzers were too light for the service required of them. As a result the sets were more or less inoperative during both the trip over and returning.

On the second trip the line stations had been changed to watertight boxes of heavy steel construction, buzzers of a non-grounded type were installed, more substantial key mountings provided and such improvements in the wiring

and installation as we were able to make were incorporated in the sets.

On this trip the two six station systems were in continuous operation both going and returning and when inspected were in entirely satisfactory operating condition. They did not require any further adjusting or attention other than renewal of rubber gaskets in the line stations and repainting on the outside of some of the boxes. In our opinion, these sets in their present condition will give continuous and reliable service without further attention on our part.

Tenadorics

After the two trips of this ship, one line station was found to be giving poor service, and our inspector, with the help of the ship electrician, located the line trouble in a junction box in which a glass tube fuse inserted in a line had loose terminals and the circuit was constantly making and breaking due to vibrations of the ship.

Frelerick De Grosse

Considerable trouble developed during this installation and a workman from the Stentor Company was sent over to straighten the matter out. We regret to say that more trouble developed from his work than originally existed, and it was necessary later to go over the entire systems and readjust the receivers at the various stations.

The sets on this ship are now in perfect working order and the Officers and men have a clear understanding as to the proper operation of same. A further inspection will be made after she has returned from her first trip.

Princess Irene

The installation of two six station sets on this ship was made without any help from the Stentor Company, and

upon inspection was found to be in perfect working order, and has so remained since. We wish to call particular attention to the quality of the installation work on this job which was far above the average of the sets installed by the Navy Yard men.

Finland

After one trip this system was gone over thoroughly and the buzzers changed to a non-grounded type. Poor service between one of the line stations and the master station was found to be a lose connection in a fuse block in the line. The trouble was identical with that found on the Tenadories.

The ships officers reported that the telephones had given satisfactory service during the entire trip and they are at the present time in perfect condition.

In addition to the above, an inspection was made of the following vessels;—

Dakodian
Momus
Erny
Pennsylvania
Atlanta
Savannah
DeKalb
Hamburg
Grant
Lincoln
Barbarousa

On additional vessels where "Stentor" Sets are being installed, the installations are being inspected and tested out by our men before final acceptance by the ships officers.

At the present time our Company feels warranted in making the statement that no case of trouble exists on any

ship, due to defective operation of "Stentor" equipment, and with ordinary care and attention in the operation and maintenance of these sets, satisfactory results can be guaranteed under any condition of service.

In connection with the above inspection work we have taken particular pains to determine what steps would be necessary to produce watertight sets of a Navy standard type and with this in view are preparing drawings showing an entirely redesigned cast metal case with full outside control for both master and line stations. This will be submitted as quickly as possible.

Very truly yours,

STENTOR ELECTRIC MFG. CO. INC.
J. L. SPENCE
Chief Engineer

JLS/BMH

APPENDIX. to Reply Brief for Appellant

—295—

Joseph J. Graf—for Plaintiff—Cross.

* * * * * * *

XQ. You mean there was a shoulder or an abutment on the inside of the housing which pressed against the rubber ring? A. No, there was a groove on the inside of the housing in which you fitted the rubber tube. Then you laid the diaphragm on the rubber tube and you had another depression or groove in the other end of the housing and you finally screwed them together.

XQ. And that did what to the rubber rings? Did that put any pressure on the rubber rings? A. They were com-

—296—

pressed until the diaphragm responded to the frequency of the voice.

XQ. How was the extent of that compression determined mechanically? A. By the reproduction of the voice.

XQ. Each instrument then had to be tested individually? A. The instruments when they came to us were set. They did not require any further adjustments. If it was necessary, due to any reason to open the housing, then the maintainer who made the change, readjusted the pressure of the diaphragm.

XQ. Could you tell to what extent the rubber wings were compressed by putting together the two elements of the housing by screwing it together? A. No, because it was invisible.

XQ. How many meetings of this Telegraph & Telephone Superintendents' Association did you attend? A. We had one every year in some part of the country.

XQ. What other roads installed the Stentor system, to your knowledge? A. I do not know.

—297—

XQ. I do not understand your answer. Do you mean you do not know whether any did? A. I do not know of any that did.

XQ. Did you keep this installation of yours a secret? A. No; we gave it a lot of publicity.

* * * * * * *

—1201—

* * * * * * *

Q. Even though you were not using that patent on the product? A. We were using it inasmuch as the patent showed—the defect was in the patent, I am trying to——

* * * * * * *

—1281—

* * * * * * *

Q. Then what did you have in mind, Mr. Farmer, when you gave yesterday upon your direct examination the following testimony, which I have upon my notes, that you experimented to test Spence's theory, that you found in using different weights of diaphragms that the thicker the diaphragms the weaker the sound, that you came back to the principle of the ordinary telephone, where the diaphragm works by flexure rather than by a piston-like motion? A. I mean just that.

Q. You determined that by using Spence's thickness of diaphragm, mounted between two hollow rubber cushions of the diameter that has been testified here, you got a flexing diaphragm? A. Yes.

—1282—

Q. Is that all you meant by your testimony? A. Yes, we got a flexing diaphragm.

Q. Now, I think you told us yesterday that the actual motion of the diaphragm was only four one hundred thousands of an inch, is that correct? A. I said that was the normal range of the ordinary telephone. The loudspeaker range is probably somewhat more than that.

Q. How much more? A. I do not know.

Q. Have you any idea? A. Oh, I could guess, but I don't think that would mean anything.

Q. Was it enough more so that it would be visible to the naked eye? A. I do not think so.

Q. Aren't you sure that it would not be? A. Yes, I really am sure.

Paul M. Farmer—for Defendant—Cross.

Q. Tell us, please, how you measured the amount of that motion. A. I did not measure that. I concluded from measurements that had been made by authorities on the subject.

—1283—

Q. Well, then, all you had to do was to read those books and not bother with experiments at all, is that it? A. I am talking about my testimony of four one hundred thousandths.

Q. Well, then, you did not measure the bending or the flexure of this diaphragm in your experiments at all, did you? A. I thought I had made clear in my description yesterday what seems to me to be so utterly simple and convincing that I cannot understand why it is not clear, but what we did was this. We took a receiver with a certain size diaphragm. We mounted that diaphragm between what Spence would call resilient rubber rings. We talked over that and got a certain speech delivery from it.

We then took that same diaphragm and the same system, in every other detail, except that we changed the mounting so that the outer periphery was tightly clamped between rings which were not resilient in the sense that Spence referred to them, and we talked over it, and we got

—1284—

practically the same results.

It seems to me that there is only one obvious deduction to be made from that, which is that the sound volume—the function was based upon vibration of the diaphragm rather than a piston-like action or a translation of the whole diaphragm bodily, as contended by Spence and as covered by Spence's patent.

Q. Now, there was nothing there that you saw with the naked eye in respect of motion of bending of the diaphragm? A. Mr. Bernays, I could probably—I can take, you can take almost any receiver today and you hold that

in a certain light, and someone is talking on there, and you can see a reflection of light, that indicates that there is activity there, and you can feel it.

Q. You can see a motion of four one hundred thousandths of an inch? A. You can see the effect of it, yes.

Q. Did you look at the diaphraagm when you were experimenting to see whether there was motion? A. Well, not with the thought of measuring how much it moved.

—1285—

Q. Did you look? A. Undoubtedly.

Q. Could you tell by looking whether it was operating by bending or by moving in a plane as an entirety? A. No, you could not tell, because if it were moving in a plane the center would presumably move as much as the outsides, that is, if it were substantially inflexible.

Q. So that by looking you could not tell whether there was bending or moving in a plane as its entirety? A. No, I am not contending that I arrived at that decision by looking at it.

Q. Now, you did not arrive at that decision by measuring the range of movement with any instrument? A. Not quantitatively, no. In those days it was not a simple matter to make quantitative measurements of that sort. It is a comparatively simple matter today. We have in our present laboratory means of very carefully measuring diaphragm performances.

Q. But you did not have those then? A. No, in those days we did not have those. They were not available.

—372—

* * * * * * *

XQ. Mr. Hollister, Schedule B to the contract of May the 20th, 1918, gives a list of contracts, does it not (handing papers)? A. Yes, sir.

XQ. Will you tell me what the first contract listed in that schedule is, what the number of it is? A. It says "U. S. Contract No. 34,145."

XQ. I beg pardon? A. "U. S. Contract No. 34,145."

XQ. Do you know when that contract was made? A. I have no idea, sir.

XQ. Schedule B shows the contracts which were assigned by Stentor to Klaxon. A. This is evidently so. I am not sure about it, but this says so here, sir. I have no doubt they were. Are those the same that were put in evidence?

XQ. That is right. A. If they were put in evidence

—373—

yesterday, they certainly were.

XQ. That first numbered contract was for the manufacture and delivery by Stentor of what? You may have those contracts, if you want them.

Mr. Bernays: Judge Morris says I may hand these to you, Mr. Hollister. I think these are the ones (handing papers).

A. Shall I read, sir?

XQ. No. I just want you to have it, and will you tell me whether at the time, on May 20, 1918, that contract had been fulfilled by Stentor Company or not?

Mr. Bernays: May I suggest, sir, that there is a question pending unanswered, again, which is, as I remember it: "What was that contract for?" I wonder if I should have it read back.

Mr. Morris: If there is one pending, I join with Mr. Bernays in asking for an answer.

The Court: Perhaps the witness can answer both questions for you at one time. What was it for?

Mr. Morris: What it was for and whether it had been performed.

—374—

A. It was for use in connection with fire control on merchant vessels and transports carrying armed guards, loud speaking telephones as follows, in accordance with the specifications, 50 sets at the Navy Yard, Boston (Charlestown, Massachusetts), per set $303.00, total $15,150.00; 100 sets at the Navy Yard, Philadelphia, Pennsylvania, per set $303.00, total $30,300.00; 100 sets at the Navy Yard, Norfolk, Portsmouth, per set $303.00, total $30,300.00; 10 sets at the Navy Yard, Charlestown, South Carolina, per set $303.00, total $3,030.00; 80 sets at the Navy Yard, Mare Island, CLA.——

Mr. Bernays: Are you sure that is not a mistype for "Cal."?

The Witness: That probably may be Cal., but it says "Cla."

A. (continued) $303. per set, $24,240.00; 20 sets at the Navy Yard, Puget Sound, Washington, $303.00 per set, $6,060.00. Grand total $109,080.

By Mr. Morris:

XQ. That contract was for the delivery by Stentor of transmitters and receivers? A. It just says receivers here. Just a moment, and I will be sure.

—375—

XQ. You have no independent recollection? A. Oh, no, not after this period of time exactly what the contracts were.

XQ. I beg your pardon? A. Loud speaking telephones,

it says, in connection with fire control, on merchant vessels and transports carrying armed guards.

XQ. You were President of the company at that time? A. Yes, sir.

XQ. And you have no recollection as to whether that contract was for transmitters and receivers or for receivers alone? A. This says telephone sets, and I should not think a set would be complete——

XQ. I am not asking you to interpret the contract. I am asking you whether, as a matter of fact, you have any independent recollection what it was for? A. Other than what the contract says, I have no independent recollection of my own.

XQ. And that included transmitters? A. It says telephone sets. I can use my own common sense, but I do not

—376—

know.

XQ. Very well.

The Court: Is the second part of the inquiry answered?

Mr. Morris: I will repeat it if I may.

XQ. Was that contract performed by Stentor prior to 1918, May 19, 1918? A. It says here important contracts for products, and that is named as one of them.

XQ. You were reading from the Schedule B to the agreement of May 20, 1918 when you gave that answer? A. Yes, sir.

XQ. I know what that says, but my question to you is not what it says there, but whether that contract No. 34,145—is it? A. 34,145.

XQ. —had been performed by Stentor prior to May 19, 1918?

Mr. Bernays: Again we have two questions, and again may we have the first one read for an answer.

The Court: Suppose we get an answer to this. We

—377—

have something concrete before us. Was it performed by Stentor?

The Witness: Yes, sir, it was performed by Stentor.

XQ. And had been performed prior to May 19, 1918? A. I did not say that, sir.

XQ. When was it performed by Stentor? A. I have no knowledge at this time at all.

XQ. What do you mean when you tell me that it was performed by Stentor, when you say you have no knowledge as to when it was performed by Stentor? A. I know that the Klaxon Company looked carefully into what we had, and from merely by remembrance I should not think they would allow anything to go into the Bill of Sale unless it was a real article. They had Coats & Burchard, and also Haskins & Sells, and that is the only answer I can give you.

XQ. I do not understand what your answer is because I do not understand that your last answer tells me whether this contract was or had been performed by Stentor prior to May 19, 1918. Tell me that again. A. That is the question now?

—378—

XQ. Yes, whether it was performed by Stentor prior to May 19, 1918? A. This contract was dated April 11, 1918.

XQ. Are we talking about the first contract? May I see the agreement? No. 34,145 we are talking about now, are we not? A. Yes, sir.

XQ. And that is the date of the contract? A. I am not quite clear about that, but it certainly gives that here on the first page. On the second page it says the 7th of January, 1918.

XQ. I am not asking you about the page, Mr. Hollister. I just want to know, please, sir, the date of the contract. A. It says this contract of two parts made and concluded the 7th day of January, 1918.

XQ. Then what has the April date 1918 got to do with it? A. That is on the front page.

XQ. Take your choice, and tell me what the date of the contract is? A. It appears from my slight knowledge that it is the 7th day of January, 1918.

—379—

XQ. How long did you have to make the deliveries under the contract? A. From memory, of course, I have no idea, unless the contract says something about it.

XQ. Will you refer to the contract and tell me the length of time within which you had to make the deliveries? A. It says here first delivery of 40 within 30 days after date of contract, to be continued at the rate of 30 sets every 10 days thereafter, and complete delivery within 120 days. We were way behind our orders, and I should doubt very much whether that specification was lived up to. Practically none of this War business with us was up to date, owing to our very small facilities, and that is why the Government asked us to give up our regular business because we were so far behind in our work.

XQ. I thought you told me awhile ago that this contract had been performed by Stentor prior to May 17, 1918? A. To my recollection I did not know. I said it had been performed and completed, sir.

XQ. What remained to be done when it was taken over

—380—

by Klaxon on May 20, 1918 under this contract? A. That I have no idea.

XQ. Had any manufacturing of these articles remained to be done. A. That, of course, I have no idea. To the best of my knowledge it is in this contract, and it would not have been in there if it had not been.

XQ. I thought you testified that all of the assets of Stentor were taken over by Klaxon under this agreement? A. Not all the assets. We retained the patents which we did not capitalize at all.

XQ. I understood that you had some manufacturing equipment? A. I think there is a schedule there.

XQ. You were President of this concern back in 1913 to 1918? A. Yes, sir.

XQ. I am asking you whether the Stentor Company, whatever its name was, the assets of which were acquired by Klaxon, did or did not have some manufacturing equip-

—381—

ment? A. Certainly.

XQ. What did they do with it after May 19, 1918, on or after May 20, 1918? A. I believe, and I have not thought of this, and this is just remembrance of a long while ago, and I will not be positive because I have not thought of it since, but as I remember it, the Klaxon Company still kept the Stentor plant in Long Island City in operation, and that is just a very, very faint remembrance, and that is my belief.

XQ. Was the Stentor plant operated by Stentor at all after May 20, 1918? A. I should not think so under the contract.

XQ. Then you said that this contract was performed by Stentor at some time. How was it performed by Stentor after May 20, 1918, if Klaxon took over the manufacturing equipment on May 20, 1918? A. After May 20th as I understand it, Klaxon took over the obligations and the contracts and the obligations to fill the contracts under the Stentor agreement.

XQ. Is this or not the fact, Mr. Hollister, that you have not any recollection at all as to what the status of

—382—

that contract was at that time? A. My recollection, sir, is this, that we honestly fulfilled every condition in that contract.

Buell Hollister—for Plaintiff—Cross.

XQ. I am not talking about the contract of May 20th, but I am only fixing the date of that contract as a period about which I am inquiring.

Mr. Morris: Will you repeat the question, please?
(The previous question was thereupon repeated as recorded.)

A. Does that contract refer to the first number on the schedule?

XQ. The contract I am referring to is No. 34,145. A. Now, may I have the question? It refers to that contract?

XQ. Yes.

(The same question was thereupon repeated as recorded.)

A. Except as the records here show, that it was under schedule B, and therefore part of the contract being turned over for completion by the Klaxon Company.

XQ. Do you know what the amount of the accounts

receivable was, of the Stentor, at the time of the contract of May 20th, 1918? A. I think Haskins & Sells under the contract made a statement of that figure which is probably available, and so I will not have to remember back that long.

XQ. You do not know? A. I have a recollection, but the exact figure I do not know. I certainly have a recollection.

XQ. You do not know whether under the contract the entire amount for this No. 34,145 contract had been paid by the Government to Stentor prior to May 20, 1918? A. You want to know whether the majority had been paid to the Stentor?

XQ. Whether the whole or a substantial part of it had been paid to Stentor prior to May 20, 1918? A. No, I have

no definite idea of that, but unquestionably, being in the contract, I should say probably it was not.

XQ. Do you know whether the profit under that contract had all been collected prior to the assignment, or do you know whether there was any profit? The question is withdrawn. Do you know whether there was any

—384—

profit to either Stentor or Klaxon under contract No. 34,145, being the first contract enumerated in schedule B to the agreement? A. This is evidently a contract to supply these to merchant vessels, as I remember, and I have not got the contract before me.

Mr. Morris: Will you repeat the question?
The Witness: I am answering it, I think.
(Last question repeated as recorded.)

A. May I answer that now, sir? If there was not a profit, it must be very peculiar, because the selling price to the merchant vessels as I remember, was about five times the cost of the article sold.

—385—

XQ. Where are any figures which would show that fact? A. I think Haskins & Sells have some figures.

XQ. Have you? A. I think I can recollect, yes.

XQ. Under what contract and made at what time and by whom? A. The figures I say were Haskins & Sells.

XQ. I am not asking about Haskins & Sells. I am asking whether you have any Stentor Company figures showing whether or not there was a profit either to Stentor or Klaxon in this U. S. Contract No. 34,145. A. For the articles sold as described in this contract, we received, for merchant vessels from commercial companies, approximately five times the cost of the article.

XQ. And is your answer yes or no to my question? A. My answer is certainly yes.

Buell Hollister—for Plaintiff—Cross.

XQ. There was a profit? A. Yes.

XQ. What was the profit on that contract? A. That I have no idea.

—386—

XQ. And who got it? A. That I cannot tell without going back over the figures. I have not got the figures, but my remembrance is that the Klaxon Company got the contract and must have had the profit, whether there were some deliveries made before or not, they knew it at the time, and I do not know.

* * * * * * *

—387—

* * * * * * *

XQ. Can you tell me anything more about Contract No. 2047, Contract No. 33,199, Contract No. 1029, Contract No. 33,410 than you have been able to tell about Contract No. 34,145? A. Except that these contracts under the contract were given to the Klaxon Company as being part of the contract. Every detail of them they investigated as new, and my remembrance now from that period of time, I do not know, sir. I wish I did, so that I could help you.

XQ. You have no recollection as to whether any of these contracts had been fully performed or whether there had been anything paid on account of those contracts? A. Any of them?

XQ. On any of them. A. No, I do not know that.

XQ. Are you able to tell me anything more about requisition AF-631, AF-632, AF-635, 11-H-1055, 11-H-1054, H-228-

—388—

247,614, or any of them, than you have told me about Contract No. 34,145? A. Merely that they were part of the contract given to the Klaxon Company, and they knew about all details of the contracts and accepted them at whatever statement we made at that time, as being a fact. There was never any disagreement, as I remember—and

this is a long while to think back—and I do not remember any disagreement, and there may have been, because drawing contracts are little funny things.

XQ. I am not speaking about disagreements, but I am merely asking what they were, and what they were for, and whether they had been performed. A. Do you want me to get all contracts and tell you what they were for?

XQ. If you can tell me anything more about these requisitions. A. They were all for loud-speaking telephonic systems for use on either battleships or merchant vessels.

XQ. I did not ask what they were for, but I am asking whether they had been performed, either by Stentor prior to May 20, 1918, or whether the sums of money that

—389—

were to be paid by the Government thereunder had been paid prior to May 20, 1918? A. If any sums were paid prior to May 20, 1918, the Klaxon Company were fully conversant with it. That is all I can say, sir.

XQ. You do remember, though, do you not, that Stentor did sell some equipment, transmitters and receivers to the Navy? A. Do you mean before the contract?

XQ. Before May 20, 1918. A. Yes, sir.

* * * * * * *

—368—

* * * * * * *

The Court: Before there was a sale, was there a profit?

Mr. Morris: Was there a net operating profit. I will withdraw it from the record, if you prefer.

—369—

* * * * * * *

XQ. Let us take net profit from your 1918 report, so far as 1918 is concerned. Will you take your pencil and paper and tell me what that report says? A. This is the report for the whole year, of course, not for this particular time.

Buell Hollister—for Plaintiff—Cross.

XQ. You cannot tell from this what it was prior to May 20, 1918? A. Salaries of officers certainly are prior.

XQ. I did not ask you that, Mr. Hollister. I am asking you as a man who ran this company and who is saying that the Klaxon Company did not make as much money out of this as it should to tell me from these figures or any other figures you have got whether there was a net operating profit by the Stentor Company from January 1, 1918 to May 19, 1918, and, if so, what it was and how you arrive at

—370—

that result? A. Yes, sir. I shall do my best. You remember that I was not the treasurer, sir, but I am just trying to reconstruct it now after these 20 years and it is being a little difficult for me, more than I had imagined, and I was not the treasurer.

XQ. You remember these figures, do you not? A. Do I remember them?

XQ. Yes. A. Merely because I have looked over them since.

XQ. Will you tell me what that net operating profit was, if there was any? A. I do not know what should be deducted from it. I do not know what the figures of deductions were after May 20th. There is no way of telling here at all.

XQ. Really? A. No. There is no way of telling here at all.

XQ. So you can't tell from your 1918 report whether or not there was a net operating profit? A. I have stated, I believe, that $15,283.26 was the net operating profit. If I am wrong, I am wrong. It is to the best of my abilities in accounting.

—342—

XQ. Yes, you may have it if you want it. Mr. Hollister, what was the aggregate profit made by Stentor Manufacturing Company, from the date of its organization on May 20, 1913 to May 20, 1918, at which time you say it

was sold to Klaxon, or when the Klaxon agreement was entered into? What was the net profit? A. As shown by the income tax sheets?

XQ. No. Will you repeat the question to Mr. Hollister? A. From the period from 1913 are you asking?

XQ. From May 20, 1913, the date of the organization of the Stentor Company. A. I have no present record of that.

XQ. Have you no present recollection, Mr. Hollister? A. The only thing I know was that the Klaxon Company, you will remember, took over the business in May of 1918,

—343—

and as was stated in a letter read here this morning, they paid nothing for the business, merely took over our quick assets. They paid us at that time, I think it has already been stated here, $130,000., and that was an amount greater than all the money that had been advanced to Stentor and its capital, and that in a period of experimental and development work which you know is very, very costly.

Mr. Morris: Will you read the question, Mr. Goldstein?

(The question referred to was repeated as recorded.)

A. I told you I had no definite figures on that, and then I explained that there was evidently during that whole period, a profit.

—344—

XQ. Are you able to say that there was a profit in 1913, a net profit? A. I have no remembrance, but I should doubt it very much.

XQ. Are you able to say that there was a net profit for 1914? A. I should doubt it.

XQ. Are you able to say that there was a net profit to the Stentor Company in 1915? A. That I do not know,

but the sales were increasing and the uses were being expanded, and we were starting out and getting at our experimental work, approaching a time when we would get a profit if we did not have one.

XQ. Your answer is that you do not know that you had a profit? A. No, sir, I did not answer it that way.

XQ. Your answer is that you do not know that you had a profit in 1916? A. The same answer as to the other question.

XQ In other words, you do not know whether there

—345—

was a net profit? A. I did not say that.

XQ. Was there a net profit in 1917, as shown by the books of the company? A. The only records I have to show that are the income tax papers which have already been exposed here. I have no other records.

* * * * * * *

—355—

XQ. Let us go back to the 1917-1918 period. Let me first ask you what was the amount of dividends declared by the Stentor Company between May 20, 1913 and May 20, 1918, when it was managed by you and Mr. Spence? A. The amount of sales for 1913 to 1918?

XQ. No, the dividends paid to the stockholders under the management of you and Mr. Spence? A. There were no dividends paid during that time.

XQ. Not during the entire period? A. No, sir.

XQ. Oh!

Mr. Bernays: Is that a question, Judge Morris?

Mr. Morris: It was answered, I think.

XQ. What salaries were paid to the executive officers of the Stentor Company prior to the making of the contract of May 20, 1918, and payment of the sums of money therein indicated by Klaxon to Stentor? A. What salaries

were paid to the executive officers during the whole period, May 20, 1913? I do not get that right.

XQ. The question is withdrawn. Were any salaries paid

—356—

to you or to Mr. Danforth or to any other executive officer prior to the receipt—or after May 20, 1918? A. No, sir.

XQ. Why not, Mr. Hollister? A. We were in an experimental stage up to say, 1917, and we did not have sufficient funds to pay salaries. We were borrowing money, and it would be very inexpedient.

XQ. Then as I understand it, until you got money from the Klaxon Company, the Stentor Company never made enough money notwithstanding it was in existence five years, to pay any salary to you or Danforth or other executive officers? A. Are you asking a question, sir? If you are——

Mr. Morris: Mr. Smart, will you read the question?
(Last question repeated as recorded.)

A. I do not say I think, sir, that we did not make enough money to pay salaries; I said we did not regard it as expedient to pay salaries.

XQ. Did you have any available funds to pay the salaries? A. No, sir.

—357—

XQ. Not having available funds, you did not deem it expedient to pay salaries? A. Yes, sir.

XQ. Now we have it. And that was true until after Klaxon Company had entered into the contract of May 20, 1918? A. Yes, sir, we were no longer an operating company, and we did not need our working capital at that time, sir.

XQ. You said you were in the experimenting company. How long did you continue to be in the experimenting company? A. I suppose any good company keeps on experimenting all its life, or I hope so, or else it will stop.

XQ. And then consequently it has that reason for not paying dividends, or not making any money? A. That we needed the capital for the conduct of our business, what we had and what we were borrowing.

XQ. And no dividends were paid? A. Not to my knowledge.

* * * * * * *

—360—

* * * * * * *

By Mr. Morris:

XQ. Will you tell me the total net profit of the Stentor Company, whatever its name was, from May 20, 1913 to May 20, 1918, while it was under your management? A. What the total net profit for that time——

XQ. Total net profit for the period, giving me the source or documents from which you obtain the information which you are about to give me? A. I have no actual figures of the total net profit, but from the sales price of $130,000., which was given by Haskins & Sells——

XQ. I am not including any profit that the Klaxon Company paid you. A. The difference between what we owed——

XQ. I am talking about the operating profits for the

—361—

5-year period, let us say, beginning May 20, 1913, and ending May 19, 1918? A. All the figures that I have available are those for 1917 and 1918.

XQ. And what would you say were the net operating profits for 1917 and up to May 19, 1918? A. According to my figures here for that period, $29,468.59.

XQ. That is for 1917 up to May 19, 1918? A. Yes, between January 1, 1917 and May 20, 1918.

XQ. Will you give me how you get that from 1917. You have a copy of the report? A. Yes, sir.

XQ. All right. Let me see how you arrive at that figure. A. On the amended corporation tax return—

XQ. You take your return. A. On the amended sheet——

XQ. On the amended sheet. I want your net operating profit for the year 1917. A. On the amended sheet it says, "Gross sales were $50,895.07".

—362—

XQ. What are those figures? A. $50,895.07.

XQ. And those represent what? A. Gross sales.

XQ. Gross sales? A. And it says on this income tax, "and other income from operations."

XQ. All right. The total net operating income is derived from those figures, how? A. Judge Morris, as I said, I am not an accountant, and I have done my best to get these, and to my best knowledge and belief they are correct. The total deductions from those gross sales amounts to $37,269.74, leaving total net income $13,685.33.

XQ. That was your total net income for the year 1917? A. As given here, and to my best knowledge and belief it is the correct one.

XQ. That figure was before the payment of any salaries to you or Danforth, and I do not know who the other executives were? A. Yes, sir, no salaries were paid.

XQ. No salaries. This is Plaintiff's Exhibit No. 28-A.

—363—

Do I read aright from that, and this is a letter from you to the Internal Revenue Department, is it not? A. Yes, sir.

XQ. "Inquiry has brought out the fact that instead of a profit there was an actual loss for the year of $9,797.38, and deponent therefore prays for the return of the entire amount of taxes paid." Did I read aright? A. Yes, sir.

XQ. And the year spoken of is 1917? A. Yes, sir.

XQ. Now, let us turn to 1918. What was the net operating profit up to May 20, 1918? A. According to the figures I have before me, gross sales $96,107.50.

—364—

XQ. I am not asking about gross sales. I am asking for what the net operating profit was of Stentor Company from January 1, 1918, to May 19, 1918.

Mr. Bernays: I think the witness, if I may speak, sir, was in process of giving an answer to that question by giving the figures.

The Court: Was he interrupted?

Mr. Bernays: I think he was, sir.

Mr. Morris: If his statement was leading to an answer to the question, I apologize to the witness and ask him to go ahead.

A. Thank you, sir. Those were the gross sales, $96,107.50, cost of goods sold $80,324.24. The difference between those figures gives gross income from operations other than trading and manufacturing, less allowances—no, excuse me—that is the total net income, sir, for 1918.

Mr. Morris: Will you read me the answer, please?

The Witness: Subtracting from the gross sales, as given, cost of goods sold, as given, leaves a net income of $15,783.26.

XQ. So that your net income of the company from

—365—

January 1, 1918, to and including May 19, 1918, was $15,783.26? A. January 1st to May 20, 1918, $15,783.26, yes, sir.

XQ. And that is the answer by you to the question as to what your net operating income was for that year? A. According to the figures I have before me.

XQ. What is that? A. According to the figures I have before me on the income tax, yes, sir.

XQ. Had you finished? A. Yes.

XQ. And the net operating income for the Stentor Company, according to your idea, is the difference between the gross sales and the cost of the goods sold, exclusive of the

expense, repairs and other items called for elsewhere in the report? A. That is the way I took these figures.

XQ. In other words, you ascertain net profit before taking out any overhead? A. I really don't know whether overhead has been taken out of that or not.

XQ. Mr. Hollister, won't you look down at questions

—366—

12, 13 and 15, right on that same page, and tell me whether those items had been taken out? A. 12 says, "Ordinary expenses necessary," "ordinary necessary expenses." What that item means I do not know. I am not very good at this stuff. You will have to bear with me, I am awfully sorry.

XQ. But you are telling us that the Klaxon Company should have made more profit than it did? A. That who should have made more profit?

XQ. Let us go down to question 25 or statement 25. You had net income for taxable year of how much, for the whole of 1918? A. According to the figures here for the whole of that year was $15,077.15.

XQ. So that was your profit for the whole year, the net income? A. I think, with those deductions as given here, yes, sir.

XQ. Let us go back now to the third line, "Gross income from operations other than trading or manufacturing," and so on. That figure is $27,815.13, is it not? A. Yes, sir.

—367—

XQ. That is what you got from the Klaxon Company, is it not? A. Yes.

XQ. All right. Then if you deduct $27,815.13 from $13,077.13, how much operating profit did you have from January 1st to May 20, 1918? A. Part of the deductions were salaries to officers, which came in after, you will remember, after May 20, 1918. We did not pay any salaries before that.

* * * * * * *

Plaintiff's Exhibit 4.

667

J. L. SPENCE.

TELEPHONE RECEIVER.

APPLICATION FILED JUNE 6, 1913.

1,112,392. Patented Sept. 29, 1914.

Fig. 1.

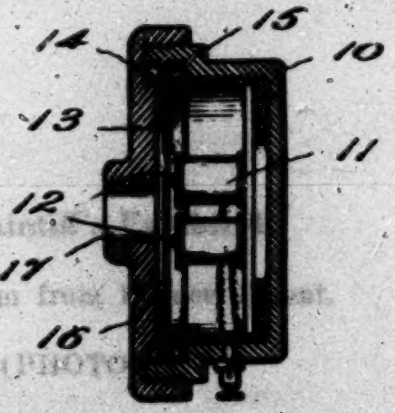
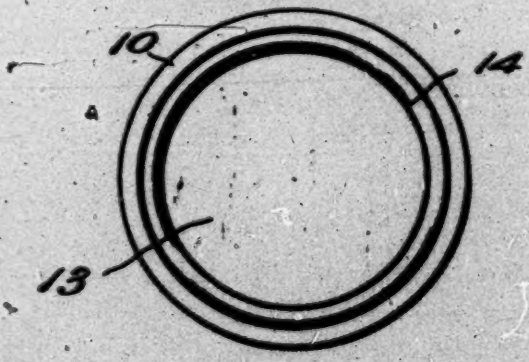


Fig. 2.



Witnesses:
Katharine C. Mead
Bene A. Lueck

Jesse L. Spence
Inventor

By his Attorneys
Wilkinson, Smith and Mack

BLANK PAGE

Plaintiff's Exhibit 4.

Diagram from Spence Patent.

(PHOTOSTAT.)

Plaintiff's Exhibit 5.

Diagram from Spence Patent.

(PHOTOSTAT.)

[*For the Convenience of Court and Counsel this Exhibit (Photostatic Copy) is Bound in on the Opposite Page.*]

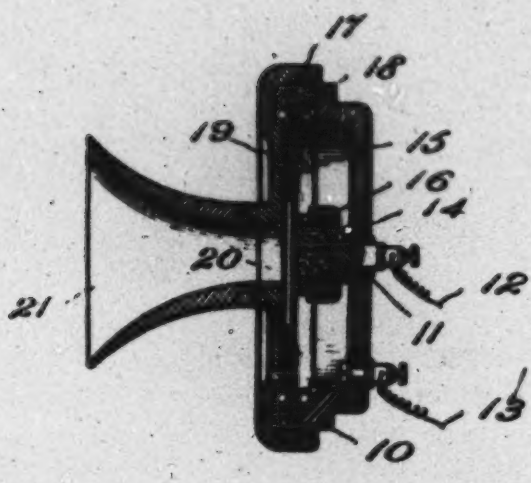
671

J. L. SPENCE.

TELEPHONE TRANSMITTER.

APPLICATION FILED JUNE 6, 1913.

1,112,167. Patented Sept. 29, 1914.



Jesse L. Spence
Inventor

Witnesses
Katharine C. Mead.
Gene A Lovick

By Williamson, Cushman and Mead
Attorneys

BLANK PAGE

Plaintiff's Exhibit 19.

Certified copy of 1918 income tax return of Stentor Electric Manufacturing Company, Inc.

(PHOTOSTATS.)

[*For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is Bound in on the Opposite Page.*]

675

Plaintiff's Exhibit No. 19

United States of America

Clerk

TREASURY DEPARTMENT

WASHINGTON

April 26, 1920.

PURSUANT to the provisions of Section 661, Chapter 27, Title 26 of the ...d States Code (Section 882 of the Revised Statutes of the United States), ...by certify that the annexed is a true copy of the corporation income ...rofits tax return, with attached schedules, of the Hunter Electric ...facturing Company, Inc., 48 Hunters Point Avenue, Long Island City, for ...ar 1918,

...s Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

...S. ...,
Chief Clerk, Treasury Department.

BLANK PAGE

DELIVER OR SEND THIS RETURN TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE MARCH 15, 1919

114

IF EXTENSION OF TIME FOR FILING RETURN HAS BEEN GRANTED THE AUTHORIZATION MUST BE ATTACHED TO THIS RETURN

G

676

Form 1120—UNITED STATES INTERNAL REVENUE SERVICE

CORPORATION INCOME AND PROFITS TAX RETURN

FOR CALENDAR YEAR 1918

OR

Fiscal Period beginning January 1918, and ended Dec 31, 1918

126

Name of corporation: Mendes Electric Mfg Co Inc

Principal place of business: 69 Hunters Point Long Island

Principal kind of business: Electrical Apparatus

PAID JUN 12 1919 Cashier 1st Dist. N. Y.

SUPERFICIAL AUDIT

RETURN AUDITED SUPERFICIAL AUDIT ASSESSMENT

123 3 1

SCHEDULE I—NET INCOME

1. Net income less Excess Profits Tax for fiscal year (or calendar year)				
2. Dividends received during year				
3. Interest on Liberty Bonds, etc.				
4. Less dividends received in 1918				
5. Net income, 1918				
6. Amount Net Income and Excess Profits Tax shown on line 5 for 1917 and 1918 and from 5 for 1917, divided by number of years				
7. Net Income for Excess Profits Tax (from Schedule I, page 2)				13 927 12

SCHEDULE II—INVESTED CAPITAL

1. Capital stock (or equivalent)										
2. Plus adjustments by way of additions (from Schedule II)										
3. Surplus										
4. Less adjustments by way of deductions (from Schedule II)										
5. Reserves										
6. Plus or minus changes in invested capital during year (from Schedule II, page 2)										
Paid-in Surplus										
7. Less deductions on account of redemption stock (from Schedule II)										
8. Invested Capital, 1918 Excess Profits									10 000	10 000
9. Average Invested Capital for year (Item 8 for 1918, 1917, and 1916 divided by number of years)										
10. Average Invested Capital for year (Item 8 for 1918 and 1917 divided by number of years)										
11. Percentage on Investment for Excess Profits Tax (Item 7 of Schedule I above, divided by Item 9 or Item 10 of this Schedule, whichever is applicable)										

SCHEDULE III—EXCESS-PROFITS AND WAR-PROFITS CREDITS

(If this return is made for a period less than a full year, Items 3 and 6 must be reduced as provided in paragraph 2, page 1 of Instructions)

1. 8% of invested capital for taxable year (Item 8, this Schedule)										
2. Exemption ($3,000)									3 000	00
3. Excess Profits Credit (Item 1 plus Item 2)									3 000	00

1. 8% of invested capital (Item 8, this Schedule)										
2. Income for preceding years (Item 6, Schedule III, page 2)										
3. (a) Taxes accrued for preceding years (Item 4 and 5, Schedule III, page 2)										
(b) Less refunds (Item 3, Schedule III, page 2)										
4. Net taxes for preceding years										
5. Exemption (special)									3 000	00
6. War Excess Credit (Item 4 plus Item 5)									3 000	00

SCHEDULE IV—COMPUTATION OF TAXES

(If this return is for a period less than a full year the invested capital must be reduced as provided in paragraph 2, page 1 of Instructions)

1. Previous	2. Amount of Invested Capital	3. Amount of Net Income	4. Excess Income over Tax	5. Rate	6. Amount of Tax
1. 8% of invested capital					
2. Over 8% of invested capital					
3. Totals	13 927 12		13 927 12	80%	11 142 10

4. Net income for taxable year (Item 7, Schedule I)										
5. Interest on tax-exempt securities (Item 4, Schedule III)										
6. Income										
7. Total (Item 4 plus Item 5)										
8. Deduct War Excess and Excess Profits Tax or Depreciation thereon (Item 6, Schedule III)										
9. Net Income (Item 7 less Item 8)										
10. Deduct War Excess and Excess Profits Tax or Depreciation thereon (Item 3 (a) plus Item 4, Schedule III)										
11. Net Income for Excess Profits Tax (Item 9 less Item 10)										
12. Invested Capital for year (Item 8, Schedule II)										
13. Deduct 8% of Invested Capital (Item 1, this Schedule)										
14. Balance (Item 11 less Item 13)										
15. 20% of Item 14										
16. Deduct Exemption (Item 2, this Schedule)										
17. Balance (Item 14 less Item 16)										
18. 80% of Item 17										
19. Total (Items 15 and 18)										
20. Total tax (Item 19)										
21. Deduct War Excess Credit (Item 6, this Schedule)										
22. Net amount due (Item 20 less Item 21)										
23. Total tax (Item 22) plus Income Tax (Item 9)										
24. Income tax withheld at source during the fiscal year ended in 1918										
25. Balance of Tax										

Received (not Paid)

BLANK PAGE

Page 2—Income Schedules.

SCHEDULE A—TAXABLE NET [illegible]

| | | |

BLANK PAGE

10

678

Page 4—Corporation Capital Schedules

SCHEDULE E—CAPITAL, SURPLUS, AND UNDIVIDED PROFITS AS USED IN EXCESS PROFITS AND ADJUSTMENTS, AND BASE PERIOD.

Item	1917	1918	1919	Taxable Year
Capital stock paid up and actually outstanding at the close of the year—				
1. Preferred				
2. Second preferred				
3. Common				
4. Total				
Surplus and undivided profits:				
5. Paid-in surplus				
6. Earned surplus and undivided profits				
7. Reserves, whether or not specifically set aside to meet any loss or liability not accrued on the books of account as of the close of the year				
8. Reserves for depreciation (Schedule K, page 5)				
9. Reduction on account of inventory reserve (Schedule H, page 5)				
10. Total (Item 4 plus Item 9)				

SCHEDULE F—ADJUSTMENTS BY WAY OF ADDITIONS.

Item	1917	1918	1919	Taxable Year
1. Amount paid in value of tangible property (other than cash) in excess of the par or stated value of the shares issued therefor				
2. Additions to surplus (Schedule G, page 4)				
3. Reserves, whether for the account of the corporation, but not specifically set aside, or liabilities on account but not accrued				
4. Adjustment of valuation of assets in inventory both during the year and the period fixed (Schedule H, page 5)				
5.				
6.				
7.				
8. Total				

SCHEDULE G—ADJUSTMENTS BY WAY OF DEDUCTIONS.

BLANK

PAGE

Plaintiff's Exhibit 19 (Continued).

(PHOTOSTATS.)

[*For the Convenience of Court and Counsel thi*
Exhibit (Photostatic Copies) is Bound in o
the Opposite Page.]

10 1

Page 6—Invested Capital Schedules (Consolidated) and Questions.

SCHEDULE I.—QUESTIONS, ASSETS.

QUESTIONS.

BOOKS OF ACCOUNT.

OTHER CONCERNS IN SAME BUSINESS.

Electrical Manufg Co

INCORPORATION.

1. Date of incorporation 1912

PERTINENT AGREEMENTS.

ACQUISITION OF MIXED ASSETS OR OF STOCK.

VALUATION OF CAPITAL STOCK.

LIST OF ATTACHED SCHEDULES.

Sch 2. Bal of Gen Ledger

Sch 3. Bills Receivable

Sch 4. Expenses

Sch 5. Computation of Officers

Sch 6. Balance Sheet

Sworn to and subscribed before me this 11 day of March, 1919

Notary Public, Dr. U. S. R. [illegible]

My Commission expires [illegible]

BLAN

IK PAGE

BLANK PAGE

6883

(10)

SCHEDULE C.

BALANCE SHEETS OF Stanton Electric Mfg Co Inc
(Exact Name of Corporation)

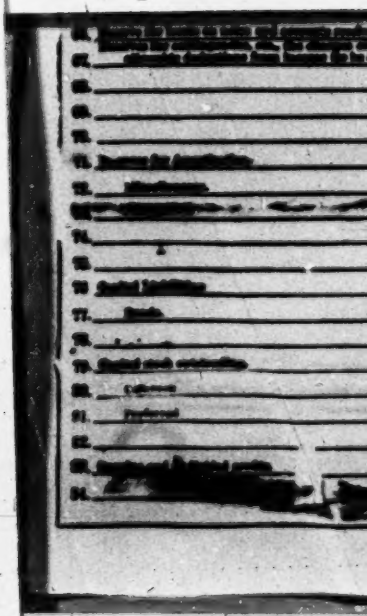
FOR TAXABLE YEAR

(To be attached to Income and Profits Tax Return as required by Schedule C page 3 of Return. Show as fully as practicable the details called for below).

ASSETS	Taxable Year Beginning	Taxable Year End
Cash (including cash in bank and on hand, certificates of deposit, etc.)	3a 64	
Trade accounts and notes receivable (before deducting reserves for bad debts)		
Other accounts and notes receivable (to be classified)		
Inventories: work in progress		
Raw materials		
Finished products	253 64 87	
Supplies		
Investments		
U.S. bonds and obligations (such issues to be stated separately)		
First Liberty Loan		
Second Liberty Loan		
Third Liberty Loan		
Fourth Liberty Loan		
Bonds—Foreign Government, State, etc.)		
" —Other		
Stock of corporations—Domestic		
" " " —Foreign		
Loans and advances To officers and employees		
" " " To others		
Deferred charges to future operations		

ASSETS	Beginning of Year	End of Year
Fixed assets		
Land		
Buildings		
Machinery		
Tools and other equipment	44804	
Delivery equipment		
Office furniture	2 2 0 0	
Other (Give details)		
Patents	2 0 0 0	
Less reserve for depreciation		
Prior Years	7 0 0 0	7000
Patents, goodwill, and other intangible assets		
Paid for in cash or other tangible property		
Paid for in stock (other than stock dividends)		
Created by stock dividend or otherwise		
Discounts		
On bonds		
On stock		
Other assets —		
Deferred		2629463
TOTAL		9629463

Taxable Year Beginning Jan 1 1918 Ended Dec 31 1918



BLANK PAGE

685

126

Holton's Form No. 2

SCHEDULE A2.

ANALYSIS OF COST OF GOODS SOLD, (EXCLUSIVE OF EXPENSES, REPAIRS AND OTHER ITEMS CALLED FOR SEPARATELY), in support of Item 2, Schedule A of Income and Profits Tax Return of

Stenter Electric Mfg Co Inc

(Insert Name of Corporation).

COPYRIGHT 1918, BY BAKER, VOORHIS, HOLTON & HOLTON, NEW YORK. PUBLISHED BY GOAD, D. GORDON & SONS, INC., 11 CLIFF ST., NEW YORK.

1. Inventories at beginning of period (to be reconciled with balance sheet)						$	26	260	37
2. Purchases during period							51	967	84
3. Labor and wages ordinarily charged to manufacturing cost on the corporation's books. The principal items of Item 3 are:									
4.	$								
5. Labor			58	09	31				
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15. Miscellaneous						$	58	09	31
16. Other expenses ordinarily charged to manufacturing cost on the corporation's books. The large or unusual items of Item 16 are:									
17.	$								
18. Rent			1	560					
19.									
20.									
21.									
22.									
23.									
24.									
25.									
26.									
27. Miscellaneous						$	1	560	
28. TOTAL						$	136	885	52
29. DEDUCT: Inventories at close of period (to be reconciled with balance sheet)							56	561	28
30. COST OF GOODS SOLD						$	80	324	24

NOTE: This schedule should not include any expense items called for separately in Schedule A.

AS—3

BLANK PAGE

687

1.3

Holeyn's Form [illegible]. 9

SCHEDULE A12.

ORDINARY AND NECESSARY EXPENSES (except amounts called for separately in Schedule A and not including cost or value of capital assets or miscellaneous investments sold during taxable year), included in Item 12, Schedule A of Income and Profits Tax Return of

Sheridan Electric Mfg Co Inc

(Insert Name of Corporation)

This Schedule shows character and amount of the principal items included in Item 12, Schedule A, the minor items being grouped in one figure.

COPYRIGHT 1918, BY BAKER, VOORHIS, STRATTON & MINTON, NEW YORK.
PUBLISHED BY GEO. D. ROBERTS & CORP., 11 PINE ST., NEW YORK.

	Character	Amount
1	Lawyers fees	$ 1000
2	Clerical help in preparing return	25
3	J. A. Spence General Manager and Patentee services previous years when no funds were available	6250
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31	Minor Items	
32	Total (Entered as Item 12, Schedule A)	$ 7275

A12.

Plaintiff's Exhibit 19 (Continued).

(PHOTOSTATS.)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is Bound in on the Opposite Page.]

Holton's Form No. 10

SCHEDULE A12.

COMPENSATION OF OFFICERS, included in Item 12, Schedule A of Income and Excess Profits Tax Return of

Hewitson Electric Mfg Co Inc

(Insert Name of Corporation)

This schedule shows for each officer (1) name, (2) duties, (3) time devoted to such duties, (4) shares of stock owned, (5) total annual compensation for the years 1916, 1917, and 1918, and (6) reasons for increases.

COPYRIGHT 1918, BY DAVIS, BRANDON, BRANDT & FELTON, NEW YORK.
PUBLISHED BY DIXIA D. GERDEN & SONS, INC., 120 CLIFF ST., NEW YORK.

Name	Duties	Time devoted to such Duties	Shares of Stock Owned	Total Annual Compensation 1916	1917	1918	Reasons for Increases
Buell Hewitson	President	See Below	235	$ —	$ —	$ 17,500	No funds available in previous years
C E Dampman	Dept Mgr	"	120	—	—	6,250	"

Plaintiff's Exhibit 19 (Cont'd).

691

A12—16

BLANK PAGE

SCHEDULE A25.

COMPENSATION AT RATE OF $2,000 OR MORE PER ANNUM, PAID TO EMPLOYEES WHO ARE STOCKHOLDERS, BY

American Electric Mfg Co Inc

(Insert Name of Corporation)

This schedule shows for each employee (if a stockholder of the corporation), whose compensation is at the rate of $2,000 or more per annum, facts similar to those called for in Schedule A12.

COPYRIGHT 1918, BY DAVIS, HARRIS, BEATTY & [illegible], NEW YORK
PUBLISHED BY GOEL D. HERBERT & SON, INC., 11 [illegible] ST., NEW YORK

	Name	Duties	Time devoted to such Duties	Shares of Stock Owned	Total Annual Compensation 1916	1917	1918	Reasons for Increases
1	J L Greene	Gen Supt & Chief Engineer	Full	250	$ 3900	$ 3900	$ 2215.44	
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								

693

BLANK PAGE

695

1.6

Hulett's Form No. 3

SCHEDULE A2.

NATURE AND AMOUNT OF PRINCIPAL ITEMS OF GROSS INCOME FROM OPERATIONS OTHER THAN TRADING OR MANUFACTURING, LESS ALLOWANCES, included in Item 3, Schedule A of Income and Profits Tax Return of

Stenton Electric Mfg Co Inc

(Insert name of Corporation)

COPYRIGHT 1918, BY DAVIS, HULETT & MILLER [illegible]
PUBLISHED BY PUBLIC LEDGER & LEDGER, [illegible]

	NATURE	AMOUNT
1.	Royalty received from Kissam Co	2115
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		
26.		
27.		
28.		
29.		
30.		
31.		
32.		

BLANK PAGE

Hunter Electric Manufacturing Co

Balance Sheet Dec 31, 1916

Liabilities		Assets	
Notes payable 01	375.00	Accounts receivable	168.75
Capital Stock 1	1000	Cash	300
		Inventory	150.00
		Machy + Tools	300
		Furniture + Fixtures	200
	$750.00		$2187.50

Dec 31, 1917

Notes payable	670.00	Accounts receivable	306.40
Accounts payable	130	Inventory	252.60
Capital Stock	1000	Machy + Tools	460
		Furniture + Fixtures	220
	$1800		$1239.00

697

BLANK

699

71

PAGE

Plaintiff's Exhibit 20.

Certified copy of 1917 income tax return of Stentor Electric Manufacturing Company, Inc.

(PHOTOSTATS.)

[*For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is Bound in on the Opposite Page.*]

701 Plaintiff's Exhibit 20.

Plaintiff's Exhibit No. 20

H. A. Mahaffey Jr.
Clerk

United States of America

TREASURY DEPARTMENT

WASHINGTON

April 26, 1922.

PURSUANT to the provisions of Section 661, Chapter 17, Title 28 of the ed States Code (Section 882 of the Revised Statutes of the United States), reby certify that the annexed are true copies of the original and amended ration income tax returns, with schedule attached to the original return, e Stentor Electric Manufacturing Company, Inc., Hunters Point Avenue, Long d City, for the year 1917,

lo this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[signature]

Chief Clerk, Treasury Department.

BLANK PAGE

703

EXAMINED PG CAFDED 2-15 See amended 45

1944

CORPORATION INCOME TAX RETURN

FOR ALL CORPORATIONS EXCEPT RAILROAD AND INSURANCE COMPANIES

Return of annual net income for the calendar year 1944, or fiscal year ended Dec 31 1944

Name of corporation: Stanley Electric Manufacturing Co Inc

Principal office: Hoosick Rivr N.Y. Long Island City

Kind of business carried on: Manufacturer of Electrical Equipment Date of organization 1928

1. Total amount of paid-up capital stock outstanding at the close of the year, or if there is no capital stock, the capital value thereof employed in the business at the close of the year. Interest on money paid in on account of capital stock is not to be included in this item, but only capital actually issued and outstanding at the close of the year for which this return is made.

(a) Paid-up "common stock" Capital Stock $
(b) Paid-up "preferred stock" $
Total paid-up stock $ 10,000
(c) Capital employed in business $

2. Total amount of bonded or other interest-bearing indebtedness outstanding at the close of the year, exclusive of indebtedness wholly secured by collateral deposited in the ordinary business of the corporation as security for the payment of loans or of indebtedness for cash in the purchase of securities, the interest on which is not subject to income tax.

Nature of indebtedness	Rate of interest	Principal
Debt	6%	$ 57,000
		$
		$

INCOME

3. (a) Gross sales and other income from operations	$ 50	07
(b) Income from subsidiaries, syndicates, etc.		
(c) Income from interest (see Item 6 on back of return)		
(d) Income from dividends (see Item 7(a) on back of return)		
(e) Income from all other sources (see Items 8 to 10 on back)		
Total gross sales and other income		
Less total deductions		
4. Total net income	15 210	13
Less: (a) [illegible] on (Item 23) $ 1446.18		
(b) [illegible] and cost of [illegible] 1944, 1945 $	5 646	07
[illegible] on [illegible]		
5. (a) Amount [illegible] (Item 8 less total of a plus b)	7 564	06
(b) Amount [illegible] (Item 8b)		
6. Amount of [illegible] (Item 5 less Item 8)	13 210	63
Less: (a) [illegible] $		
(b) [illegible] on (Item 24) $		
11. Amount taxed [illegible] (Item 5 less total of a plus b)	7 564	06

DEDUCTIONS

(Other than operating items on back of return.)

a. (a) Cost of goods and other property sold	$	15 446 18
(b) Repairs [illegible]		17 605
(c) Losses sustained charged off		
(d) Bad debts charged off		12 00
(e) Depreciation charged off		
(f) Depletion [illegible] (complete schedule under (d) and (e))		32 10
(g) Interest paid on deposits (for banks only)		
(h) Interest paid on indebtedness wholly secured by collateral		
7. (a) Domestic taxes paid, not including income and excess profits taxes		
(b) Foreign taxes paid		
Total		17 1446 18
10. Amount of [illegible]		5 646
10. Amount of 6% tax (6% of Item 9a)		151 2
11. Amount of 15% tax (15% of Item 10)		
11. Amount of 40% tax (40% of Item 11)		
12. Total tax assessable		6 099

We, the undersigned president and treasurer of the above-named company, whose return of net income is herein set forth, being severally duly sworn, each for himself, deposes and says that the items stated in the foregoing report and in the supplementary statement and in any schedule or form attached to or accompanying this return are to the best knowledge and belief, true and correct in each and every particular.

Sworn to and subscribed before me this 7th day of March, 1945

John L. Flynn

Bruce Hallock, President

H.E. Danforth, Treasurer

(Notary Public)

(Seal affixed where notary attests)

EXAMINED

GENERAL INSTRUCTIONS

[illegible]

BLANK PAGE

SUPPLEMENTARY STATEMENT

The following information must be furnished, either on this sheet or on attached schedules, by every corporation, joint-stock company, or association. Without such information the return will not be accepted as complete. The items below relate to the correspondingly numbered items on the first page.

3. (a) TRADE DISCOUNT.

Amount to be reported as income for the purpose of the income tax includes all interest received on bonds or securities owned by the corporation except interest on the bonds of a State or political subdivision thereof or interest upon the obligations of the United States or its possessions.

3. (b) TRADE DISCOUNT ALLOWED.

Any discounts, rebates or refunds to be made by a corporation out of its earnings or profits during the year (whether allowed in the form of a credit on account, cash refunds, or otherwise) to customers, dealers, or others (except those specifically allowed as a reduction (under Items 2 (b) on first page of this form) by the selling corporation as an item of the cost of goods sold) should be returned as an item to be deducted and will be allowed as a deduction in computing net income. If an amount is returned as an item to be deducted and will be allowed as a deduction in computing net income, it will not be allowed as a deduction in the year in which the payment is made. If an amount received from sales of goods in 1921 is returned in 1922, 1923, 1924, and 1925 on accounts received from sales of 1921 and 1922, it will be allowed as a deduction in computing net income for the year 1921. A statement from the corporation paying the dividends declared should be attached to this return, showing separately the amount of dividends paid out of earnings of each year; otherwise, they will be deemed to have been paid out of the earnings of 1921 and all be taxed [illegible]. The preceding explanation is also true with respect to amounts credited to 1921 on the note application to the years in which the profits were earned, such [illegible] as the following items:

Amounts received in 1921 out of profits earned prior to March 1, 1913.					
1917	1918	1919	1920	1921	Total.
$	$	$	None	$	$

3. (c) TRADE OTHER SOURCES.

Income received from all sources not elsewhere specified should be inserted below:

		None		
Total				

4. (a) COST OF GOODS AND OTHER PROPERTY SOLD.

Report the cost of goods sold in the following form:

[illegible]		25	93	31
[illegible]				
[illegible]		15	96	
Total		40	89	31
[illegible]		28	32	27
[illegible]		12	57	74

Explanation: [illegible]

If the corporation makes inventories of merchandise or materials, explain the basis on which they are made, whether (a) at cost, or (b) at cost or market value, whichever is lower. If the inventories are made, under the option according to Regulations, that cost shall be the cost of purchase or of purchase and production for the year. If the cost of merchandise [illegible] Regulations [illegible]

[illegible]

1. Original cost of property [illegible]
2. Market value March 1, 1913, if acquired before that date [illegible]
3. Cost of subsequent improvements, if any [illegible]
4. Depreciation and depletion to date of sale [illegible]
5. Net cost (Item 1 or Item 2 plus Item 3 minus Item 4) [illegible]

Date [illegible] value March 1, 1913, was determined [illegible]

Does such value include any good will? If so, how much? $ [illegible]

4. (b) EXPENSES, GENERAL.

The law permits deduction of the ordinary and necessary expenses paid within the year in the operation of the business, including [illegible] of salaries [illegible] Regulations [illegible] the year [illegible] not all to the office or principal place of business [illegible] Regulations [illegible] of the year [illegible] Regulations [illegible] Regulations [illegible] Regulations [illegible]

[illegible]			[illegible]
[illegible]			[illegible]
[illegible]			[illegible]
Miscellaneous supplies			208
[illegible]			[illegible]
[illegible]			[illegible]

Explanation: [illegible]

5. (a) LOSSES.

Losses deductible under this item must be distinguished from depreciation or other charges deductible under other items, and shall be limited to actual losses sustained during the year and charged off on the books of the corporation.

Kind of property (if sold)	Date of property	Cause of loss	Amount charged off within year
	None		

When was the deducted loss ascertained to be such? [illegible]

How was they so ascertained? [illegible]

The cost of property lost should be determined as indicated in Item 4 (a).

A bad debt (including income earned since January 1, 1913, and may be allowed as a deduction when the amount was reported as income for the year in which the debt was created.

Were [illegible] the debts charged off (if any) were considered to be worthless [illegible]

If all or any losses thus charged off as worthless is collected the amount collected must be returned as income for the year in which received.

Unpaid debts are not deductible if made good by recovery of property sold or retention of property pledged.

5. (b) DEPRECIATION.

The amount deductible on account of depreciation is the amount charged off within the year [illegible] the value of physical property [illegible] of ordinary wear, tear, and use. Such amounts should be determined upon the basis of the cost of the property and the probable number of years over which it will be used [illegible] this corporation, as well as any other [illegible] the same, are not subject to exhaustion, wear, and tear within the meaning of the law. The amount charged off as representing a decrease in the value of such assets [illegible] not [illegible] either as depreciation or as loss.

Depreciation [illegible] the total [illegible] value of merchandise in stock [illegible] this section [illegible] the amount [illegible] the merchandise is carried in.

If a deduction is made on account of depreciation, the following statement must be filled in:

Kind of property.	Rate.	Period [illegible]	Amount of depreciation charged off. This year.	Previous years.
[illegible]	6 [illegible]	5 [illegible]	1200	
Machinery				
Total	$ 2000		$ 1200	$

If building, also enter "Cost of property" the material of which constructed.

5. (c) DEPLETION.

Depletion applies to the exhaustion of natural deposits, and corresponds to depreciation in relation to the depreciation [illegible] interest, or the case of purchase prior to March 1, 1913, an amount sufficient to return to the corporation the fair market price or value of such deposits as of that date. Any allowable deduction on account of depletion must not exceed the fair market value as of March 1, 1913, or the cost of such property to the corporation, [illegible] amount mined and sold during the year, and is [illegible] the corporation with the [illegible] set out in Articles 219 to 223, Regulations 45, Revised. The amount ought to be deducted on this account [illegible] charged off on the books of the company.

Kind of property.	Value of property as of March 1, 1913.	Cost of property as of March 1, 1913.	Amount of depletion charged off. This year.	Previous years.
		None		

[illegible] March 1, 1913 [illegible]

6. INTEREST PAID.

(a) The amount of interest deductible under (a) is the amount actually paid within the year on account of bonds or other indebtedness [illegible] on which [illegible] (2) or (4) and [illegible] interest [illegible] the purchase of property or carrying [illegible] which [illegible] interest [illegible] from income [illegible] the year, or if [illegible] year, [illegible] corporation [illegible] the close of the year, or if [illegible] year, [illegible] of the [illegible] of the year, plus [illegible] [illegible] of the year [illegible] [illegible] [illegible]

BLANK PAGE

707

CARDED

Form 1000. UNITED STATES INTERNAL REVENUE.

CORPORATION EXCESS PROFITS TAX RETURN

Taxable year ended Dec 31, 1917

Name

Business address

Kind of business

Date established 1913

GENERAL INSTRUCTIONS.

1. Complete Instructions.—For complete instructions concerning the filing of this form see Regulations No. 41 relative to the War Excess Profits Taxes imposed by the War Revenue Act approved October 3, 1917, referred to hereinafter as Excess Profits Tax Regulations. Copies can be obtained from any collector of internal revenue.

2. Who must make a return on Form 1000.—Every corporation having for the taxable year a net income of $5,000 or more (see Form 1041) must make a return on this form of all average invested capital during the taxable year and compute the amount of its excess profits tax, if any, as directed herein.

This return should be made at the same time and in the same manner as the return of net income for the taxable year on Form 1031.

A corporation which claims that it employs in its business only a nominal capital or that it can not satisfactorily determine the amount of its invested capital (see instruction 10) will be given no aid in order to show the facts necessary for action on its claim.

3. Taxable years.—The taxable year is the calendar year 1917 or of the fiscal year of the corporation differs from the calendar year) the fiscal year ending in the calendar year 1917. A corporation whose fiscal year differs from the calendar year may also use this form for its return (without section for previous period) covering the fiscal year ending in 1918.

4. Taxable income.—All the income of a corporation from whatever source derived is deemed to be derived from its business and all such income subject to the income tax is also subject to the excess profits tax except as provided for in Schedule I.

5. Deductions.—Each corporation whose income derived from a business carried on with invested capital is subject to excess profits tax may deduct from the amount of its taxable income (1) an amount equal to not less than 7 per cent and not more than 9 per cent of the amount of its invested capital, as explained below; and (2) $2,000.

If the corporation was not in existence during the whole of at least one of the calendar years 1911, 1912 and 1913, determined by the act of October 3, 1917, or the present period, and has not succeeded to the business of a business which was carried on during any one or more of those years, the first deduction is an amount equal to 9 per cent of the average of invested capital. Otherwise the deduction is an amount equal to the same percentage (like invested capital for the taxable year as the average net income during the present period was of the average invested capital during that period; provided that if such percentage is less than 7 per cent the deduction shall be computed at the rate of 7 per cent and if more than 9, at the rate of 9 per cent (see Excess Profits Tax Regulations, Article 21).

In order to take advantage of this provision, the corporation must make a return of invested capital during the previous period as well as during the taxable year. Space for such a return is provided on this form.

If the corporation prefers it may compute the deduction at the rate of 7 per cent and avoid the necessity of rendering a return of invested capital for the previous period. In any case the average amount of invested capital during the taxable year must be determined if possible.

6. Invested capital.—For definition of "invested capital" and complete instructions for computing its amount see Excess Profits Tax Regulations, Articles 48 to 63.

7. Computation of tax for fiscal years, part of which falls in the calendar year 1917.—The tax of a corporation whose fiscal year differs from the calendar year shall be that proportion of the tax computed on the net income for the fiscal year which the number of months from January 1, 1917, to the end of the fiscal year bears to the entire number of months in the fiscal year.

8. Corporations making claim for assessment under Article 82 of the Regulations (section 210 of the act of October 3, 1917) should answer all questions and fill all schedules so far as possible and attach a statement explaining why it is impracticable to, in the case of foreign corporations, conveniently expected to fill out the entire return.

SCHEDULE I.—NET INCOME FOR TAXABLE YEAR SUBJECT TO EXCESS PROFITS TAX.

1. Net income for taxable year shown in item 6, Form 1031		13
2. Plus interest on obligations of the United States issued since September 24, 1917, held by corporation in excess of $5,000 par value		
		13
3. Less all the interest mentioned in section 4 of Form 1031		
4. (a) Percentage of taxable net income of legal limit on indebtedness incurred for purchase of obligations required in item 2, above		
5. Net income subject to excess profits tax		13

SCHEDULE II.—INVESTED CAPITAL.

ITEM.	1917	1916	1915	TAXABLE YEAR.
1. Capital, surplus, and undivided profits at the close of the [illegible] (as shown by reconciliation made below [illegible] Schedule A)				
2. Additions by way of additions (from Schedule B)				
3. Total				
4. Deductions by way of deductions (from Schedule C)				
5. Invested capital or beginning of year (Item 3 less Item 4)				
6. Changes in invested capital during year (from Schedule D)				
7. Invested capital for year				
8. Average invested capital for taxable year				

SCHEDULE III.—DEDUCTIONS.

1. Average invested capital for previous period. (Item 8, Schedule II, 1916-1915) by Item 8, Schedule II. Carry out result to the as desired,

SCHEDULE IV.—COMPUTATION OF TAX.

Class of invested capital (see instruction 10 of Schedule II)		Amount of income to which rate applies	Deduction of the amount of the average invested capital for the previous period (see instruction 5)	Income subject to tax	Rate	Amount of tax
(a)	(a) of invested capital					
	(b) of invested capital					
	(c) of invested capital					
	(d) of invested capital					
Total invested capital		13	3	9,000 13		
Net income		13	3	9,000 13		

BLANK PAGE

2

709

SCHEDULE A.—CAPITAL, SURPLUS, AND UNDIVIDED PROFITS AS SHOWN BY BOOKS BEFORE MAKING ANY ADJUSTMENTS THEREIN.

A1. Stock actually outstanding (not in the corporation treasury) at the end of the preceding taxable year may be counted as invested capital to the extent that it is paid up.

A2. Reserves consisting of amounts not deductible in the computation of net income under the income tax law, may, if properly explained, be included as part of the surplus for the purpose of computing the invested capital.

ITEM.	[illegible]	[illegible]	[illegible]	TAXABLE YEAR.
Capital stock paid up and actually outstanding at the close of the preceding year (not including treasury stock):				
1. First preferred	$	$	$	$
2. Second preferred				
3. Common Capital Stock				10000
4. Total	$	$	$	$ 10000
Surplus and undivided profits:				
5. Paid-in surplus	$	$	$	$ 0
6. Earned surplus				
7. Undivided profits				
8. Enter total of items 4, 5, 6, and 7	$	$	$	$ 10000

SCHEDULE B.—ADJUSTMENTS BY WAY OF ADDITIONS.

B1. If any part of the interest on the corporation's permanent indebtedness was excluded as a deduction from the corporation's income for any year (see Form 1031), a proportionate part of such indebtedness may be added to invested capital for that year on Item 1, Schedule B.

B2. If any addition to invested capital is reported in Item 2, Schedule B, submit a full statement showing the kind of property, the date when paid in, its value on that date, and how the value was determined.

B3. If no addition to invested capital is reported in Item 2, Schedule B, submit a statement showing the kind of property, its cost, and the year in which it was acquired.

B4. If any addition to invested capital is reported in Item 3, Schedule B, state specifically the amount of depreciation or depletion, actual or allowed, each year in the books of the company and the amount allowed as a deduction in computing taxable income.

ITEM.	[illegible]	[illegible]	[illegible]	TAXABLE YEAR.
1. Proportion of permanent indebtedness, the interest on which is not deductible from income in computing income tax (Article 44)	$	$	$	$
2. Value of tangible property in excess of par value of stock issued therefor (Article 59)		None		
3. Additions to capital account allowable under Article 34				
4. Depreciation charged in accounts of corporation but disallowed by Treasury Department on expense or income tax returns				
5.				
6.				
7. Total	$	$	$	$

SCHEDULE C.—ADJUSTMENTS BY WAY OF DEDUCTIONS.

C1. In any good will, trade-mark, trade brand, franchise, or similar intangible property, paid in for stock, entered on the books of the corporation in excess of the actual cash value when paid in? No In excess of the par value of the stock issued therefor? No In excess (in the aggregate) of 20 per cent of the par value of the stock outstanding on March 3, 1917? No

If so, submit a statement showing (a) date of acquisition; (b) cash value at that date; (c) par value of stock issued therefor; (d) par value of total stock outstanding on March 3, 1917; and (e) value at which the assets are entered on the books of the corporation.

The amount by which "c" exceeds "b," "e," or 20 per cent of "d," whichever is lowest, must be entered as Item 1, Schedule C, for the taxable year and for each year of the power period that is affected.

C2. In any patent or copyright, paid in for stock, entered on the books of the corporation at a value in excess of its actual cash value when paid in? No In excess of the par value of the stock issued therefor? No

If so, submit a statement showing (a) date of acquisition; (b) cash value of the patent or copyright at that date; (c) par value of the stock issued therefor; and (d) value at which the patent or copyright is entered on the books of the corporation.

The amount by which "d" exceeds "b" or "c," whichever is the lower, must be entered as Item 2, Schedule C, for the taxable year and for each year of the power period that is affected.

C3. In any tangible property, paid in for stock, entered on the books of the corporation at a value in excess of its actual cash value when received? None In excess of the par value of the stock paid therefor? No

In any tangible property paid for specifically with stock taken January 1, 1914, entered on the books of the corporation at a value in excess of its actual cash value on that date? No

If the answer to any of the foregoing questions is "yes," submit a statement showing (a) kind of property; (b) when acquired; (c) par value of the stock paid therefor; (d) actual cash value of the property when paid for; (e) actual cash value of the property on January 1, 1914, if paid in before that date; (f) basis of the valuation stated under "c"; (g) value at which the property is entered on the corporation's books; and (h) amount by which such value exceeds the allowable value under Article 35 of the Income Profits Tax Regulations. Enter this amount as Item 3, Schedule C, for the taxable year and for each year of the power period that is affected. (Note that the value January 1, 1914, does not affect the power period.)

C4. (a) Was any stock issued by the corporation ever returned as gift or for a consideration substantially less than its par value? No (b) If so, what was the par value of such stock? (c) What amount of cash or its equivalent was derived from the resale of such stock? $

The excess of "b" over "c" must be entered as Item 4, Schedule C, for the taxable year and for each year of the power period that is affected.

C5. Has the business augmented or contributed, or was its ownership changed since March 3, 1917? No If so, answer the following questions:

(a) Did an interest in the business of 50 per cent or more remain in the control of the same persons, corporations, associations, or partnerships, or of any of them?

(b) Were any of the assets entered on the books of the corporation making this return at a higher value than on the books of its predecessor?

(c) If so, were such assets paid for specifically as such in cash or taxable property?

The increase in book value of any property not so paid for must be deducted from the invested capital for the taxable year on Item 5, Schedule C, unless it can be shown that under the excess profits law and regulations the property was undervalued on the books of the predecessor business.

C6. Is any property paid for with cash or with other taxable property entered on the books of the corporation at a value in excess of the amount of cash paid therefor or the actual cash value of the taxable property paid therefor? If so, submit a statement showing (a) kind of property; (b) amount of cash paid therefor; (c) actual cash value of other taxable property paid therefor; (d) how that value was determined; (e) value at which the property is entered on the books of the corporation; and (f) excess of "c" over "d" or "e." This excess must be entered as Item 6, Schedule C, for the taxable year and for each year of the power period that is affected.

C7. The allowable provision have been made in the expense accounts of the company for (a) losses of every kind? No ; (b) depreciation? No ; (c) [illegible] No ; (d) depletion of mineral deposits, timber supplies and the like?

If adequate charge has not been made for depreciation, depletion, obsolescence, and other losses, and the value of the property has not been augmented by replacements that have been charged to expense, proper additional charges for depreciation must be computed for all years in which they were not made on the books, and the total amount of such charges must be entered as Item 7, Schedule C, for the taxable year (and for each year of the power period that was affected) and deducted in arriving at its surplus and undivided profits.

C8. Has the corporation any stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to excess profits tax? No

If so, at what value are they carried on the corporation's books? $

Has any portion of such assets been included in invested capital in accordance with Article 42 and 43 of the Income Profits Tax Regulations? If so, how much? $

Is the balance in excess of the corporation's indebtedness, excluding the amounts thereof that has been included in invested capital as Item 1, Schedule B? If so, state the amount of such excess. $

Enter this amount as Item 8 in Schedule C for the taxable year, and make a similar correction for each year of the power period.

BLANK

711

73

PAGE

Plaintiff's Exhibit 20 (Continued).

(PHOTOSTATS.)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is Bound in on the Opposite Page.]

none

none

none

none

BLANK PAGE

QUESTIONS.

1. Explain the nature of the corporation's business if not adequately described on first page:
   (a) Main business _____
   (b) Collateral businesses, if any _____

2. Date of incorporation 1913 3. Under the laws of what State or country? Maryland

4. Enter on the following lines the name and address of every representative corporation in your holding group of the same kind of business:
   Western Glassware Co Youngstown Ohio
   Eastern Glassware Co do
   Central Manufacturing Mfg Co do

5. What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax (if any) made against the year? None

6. If any patents be included among your assets, attach a schedule to this return showing for each patent the serial number, date of issue, name of patentee, amount of cash or stock paid therefor, and its present book value _____

7. If the corporation ever took over a going business or otherwise acquired a mixed aggregate of tangible property, patents, and copyrights, and good will and other similar intangible property, and paid for such property in whole or in part with stock or other securities, submit a statement showing—
   (a) The name of the concern taken over (or from which the property was acquired).
   (b) The nature of the assets and liabilities so acquired.
   (c) The total par value of the stock issued therefor.
   (d) The value at which each class of assets was carried on the books of the concern from which acquired. (If available submit a balance sheet of the predecessor corporation as of the date of acquisition.)
   (e) The value at which each item was entered on the books of the corporation making this return. The different classes of property must be valued as prescribed by Article 20 of the Excess Profits Tax Regulations and the values so declared must be used in making adjustments 1, 2, and 3, Schedule C.
   If patents or copyrights were acquired, state the basis on which their value was determined, and how they were paid for.
   If good will or other intangible assets were acquired, state the basis on which their value was determined, and how they were paid for.

8. Is the corporation affiliated with one or more other corporations within the meaning of Article 77 of the Excess Profits Tax Regulations? _____
   If so, submit a statement describing all its intercorporate relationships.

9. Is this return a consolidated return within the meaning of Article 76 of the Excess Profits Tax Regulations? No If so, submit a schedule showing in detail the computation of the consolidated invested capital and income.

10. If the corporation was not in existence during the whole of any one of the calendar years 1914-1916, is the business substantially a continuation of a business carried on during any one or more of those years? _____ If so, give name under which, and address at which, the business was then carried on _____

11. Submit a copy, in detail, of—
   (a) The balance sheet of the corporation at the beginning of the taxable year.
   (b) The balance sheet of the corporation at the close of the taxable year.

We, the undersigned, president and treasurer of the above-named company, being severally duly sworn, each for himself deposes and says that the foregoing return, including the accompanying schedules and statements (if any), has been examined by him and is to the best of his knowledge and belief a true and complete return made in good faith pursuant to the Excess Profits Tax Regulations.

Sworn to and subscribed before me this 17 day of April 1918

John L. Hyson

Notarial Seal

Pittsburgh Pa.

C. C. Dumford

BLANK PAGE

No. 717

CORPORATION EXCESS PROFITS TAX RETURN

Name: Alaska Electric Prospecting Co. Inc.

Business address: Hunters Point Cove Long Island City

Kind of business: Manufacture of electrical equipment

Date entered: 9/13

GENERAL INSTRUCTIONS

1. Complete instructions.—For complete information concerning the filing of this form see Regulations No. 41 relative to the War Excess Profits Taxes imposed by the War Revenue Act approved October 3, 1917, referred to hereinafter as Excess Profits Tax Regulations. Copies may be obtained from any collector of internal revenue.

2. Who must make a return on Form 1000.—Every corporation having for the taxable year a net income of $5,000 or more (see Form 1031) must make a return on this form of its average invested capital during the taxable year and compute the amount of its excess profits tax, if any, as directed herein.

This return should be made at the same time and in the same manner as the return of net income for the taxable year on Form 1031.

A corporation which claims that its capital is its business only a nominal capital or that it can not satisfactorily determine the amount of its invested capital must nevertheless fill this form as far as practicable in order to show the facts necessary for action on the claim.

3. Taxable years.—The taxable year is the calendar year 1917 or all the fiscal years of the corporation differs from the calendar year) the fiscal year ending in the calendar year 1917. A corporation whose fiscal year differs from the calendar year may also use this form for the return (without income for preceding period) covering the fiscal year ending in 1918.

4. Taxable income.—All the income of a corporation from whatever source derived is deemed to be derived from its business and all such income subject to the income tax is also subject to the excess profits tax except as provided for in Schedule I.

5. Deductions.—Each corporation whose income (derived from a business carried on with invested capital) is subject to excess profits tax may deduct from the amount of the taxable income (1) an amount equal to not less than 7 per cent and not more than 9 per cent of the amount of its invested capital, as explained below, and (2) $2,000.

If the corporation was not in existence during the whole of the first year of the calendar years 1911, 1912, and 1913, designated by the act of October 3, 1917, as the power period, and has not succeeded to the control of a business which was carried on during any one or more of those years, the first deduction is an amount equal to 9 per cent of the amount of invested capital. Otherwise the deduction is an amount equal to the same percentage of the invested capital for the taxable year as the average net income during the power period was of the average invested capital during that period, provided that if such percentage is less than 7 per cent, the deduction shall be computed at the rate of 7 per cent and if more than 9 at the rate of 9 per cent (see Excess Profits Tax Regulations, Article 20).

In order to take advantage of this provision, the corporation must make a return of invested capital during the power period as well as during the taxable year. Space for such a return is provided on this form.

If the corporation prefers, it may compute the deduction at the rate of 7 per cent and avoid the necessity of rendering a return of invested capital for the power period. In any case the average amount of invested capital during the taxable year must be determined if possible.

6. Invested capital.—For definition of "invested capital" and complete instructions for computing its amount see Excess Profits Tax Regulations, Articles 48 to 65.

7. Computation of tax for fiscal years, part of which falls in the calendar year 1917.—The tax of a corporation whose fiscal year differs from the calendar year shall be that proportion of the tax computed on the net income for the fiscal year which the number of months from January 1, 1917, to the end of the fiscal year bears to the entire number of months in the fiscal year.

8. Corporations making claim for assessment under Article 36 of the Regulations (section 200 of the act of October 3, 1917) should answer all questions and fill all schedules so far as possible and attach a statement explaining why it is impracticable, in the case of foreign corporations, successfully separate to fill out the entire return.

SCHEDULE I.—NET INCOME FOR TAXABLE YEAR SUBJECT TO EXCESS PROFITS TAX.

1. Net income for taxable year shown in Form 1031		$ 13,210.02
2. Plus interest on obligations of the United States issued since September 24, 1917, not wholly exempt in excess of $4,000 per value		13,210.02
3. Total		
4. (a) Income paid (not in excess of legal limit) on indebtedness incurred for purchase of obligations exempt by Sec. 5, above		
5. Net income subject to excess profits tax		13,210.02

SCHEDULE II.—INVESTED CAPITAL.

Items	1911	1912	1913	Taxable year
1. Capital, surplus, and undivided profits at the close of the preceding year or dates by corporations whose taxable income is computed upon basis other than calendar year (Schedule A)				10,000.00
2. Adjustments by way of additions (from Schedule B)				25,000.00
3. Total				35,000.00
4. Adjustments by way of deductions (from Schedule C)				
5. Invested capital or beginning of year (Item 3 less Item 4)				
6. Proportion of invested capital for [illegible]				
7. Invested capital for year				
8. Average invested capital for taxable year				

SCHEDULE III.—DEDUCTIONS.

1. Percentage and income to invested capital for power period. (Item 4, Schedule F, divided by Item 3, Schedule II. Carry out results as far as desired. Let only the numerator, if any, exceed the denominator the first figure of the quotient)	%
2. Percentage to be used in computing deduction (see Instruction 5)	%
3. Amount of deduction computed as shown above on invested capital for taxable year	2,000.00
4. Exemption (except for foreign corporations)	2,000.00
5. Total deductions	4,000.00

SCHEDULE IV.—COMPUTATION OF TAX.

Months in taxable year and computation of tax		Amount of invested capital	Rate	Amount of tax
From	To			
1917	1917			
1917	1917			
1917	1917			
1917	1917			
1917	1917			
1917	1917			
Total				

BLANK PAGE

SUPPLEMENTARY STATEMENT

The following information must be furnished, either on this sheet or on attached schedules, by every corporation, joint-stock company, or association. Without such information the return will not be accepted as complete. The figures below relate to the corresponding numbered items on the first page.

2. (a) TRADE DIVIDENDS.

Amount to be reported as income for the purpose of the income tax (whether received in kind or in cash) from the ownership of shares of stock, bonds, or securities issued by the corporation, joint-stock company, or association filing this return, or by any other corporation, association, or business organized under the laws of a State or political subdivision thereof or the District of Columbia or the United States or its possessions.

2. (b) TRADE DIVIDENDS RECEIVED.

Any distributions made or ordered to be made by a corporation out of the earnings or profits accumulated since March 1, 1913, whether the cash or stock of the paying corporation, joint-stock company, or association, is distributed directly by the paying corporation, joint-stock company, or association or indirectly through the medium of a trustee or stockholder or a nominee thereof, are to be included in full in the income of the person receiving them, whether they be termed dividends or are paid out of earnings or profits accumulated by the corporation before March 1, 1913, or out of earnings or profits of the year in which they are paid or of any subsequent year. Any distributions made out of earnings or profits accumulated by the corporation before March 1, 1913, are to be returned as income from sources other than those specified in Schedules A, B, C, and D, and are subject to the normal tax only. Any distributions made out of earnings or profits of the year in which they are paid or of any subsequent year are to be returned as income from dividends, and are subject to both the normal tax and the additional tax. Any distributions made out of earnings or profits accumulated since March 1, 1913, but prior to the year in which they are paid, must be entered in the following form:

Date made or voted in 1917 out of profits accumulated since March 1, 1913, and prior to 1917	Amount	Date made or voted in 1917 out of profits accumulated since March 1, 1913, and prior to 1917	Amount
None	$		$

3. (a) TRADE OTHER SOURCES.

Income received from all sources not elsewhere specified should be itemized below:

None	$
Total	$

4. (a) COST OF GOODS AND OTHER PROPERTY SOLD.

Report the cost of goods sold in the following form:

Inventory January 1st, 1917	$ 25,607 11
Net purchases or cost of manufacturing (if a business producing goods of its own manufacture, attach a full and complete statement of cost)	
Plus inventories at beginning of year	15,000
Total	$ 40,607 11
Less inventories at end of year	22,240 00
Net cost of goods sold	$ 18,367 11

Explanations

If the corporation makes inventories of merchandise or materials, explain the basis on which they are made, whether (a) at cost, or (b) at cost or market, whichever is lower. If an inventory is made, under an accepted method, but not named here, explain fully. If no inventories are made, explain the method used in determining the total cost of goods purchased or produced during the year. If the cost of merchandise sold during the year has been determined by any method other than those specified in the regulations, explain fully.

Corporations dealing in real estate, and any corporation that has sold any of the real estate during the taxable year, should report the cost of the property sold in the following form:

1. Original cost of property	$
2. Market value March 1, 1913, if acquired before that date	
3. Cost of subsequent improvements, if any	
4. Depreciation and depletion to date of sale	
5. The cost (item 1 or item 2 plus item 3 minus item 4)	$
State how market value March 1, 1913, was determined	
Was such value included in any good will? If so, how much?	$

5. (b) EXPENSES, GENERAL.

Each item should include only the ordinary and necessary expenses paid within the year in the operation of the business. It should not include any expenditure properly chargeable to capital account.

Depreciation is not allowable, either on the cost or on the value of property acquired before March 1, 1913, except to the extent that the value of property on March 1, 1913, has been taken into account in determining gain or loss. Depreciation is not allowable on property acquired since March 1, 1913, except to the extent that the cost of property has been taken into account in determining gain or loss. Depreciation is not allowable on property acquired by gift, bequest, or inheritance.

If property was acquired before March 1, 1913, the cost or the value of property should be taken as the basis for computing depreciation, and not the actual cost or value at the time of purchase. If property was acquired after March 1, 1913, the cost of property, or the fair market value of property at the time of acquisition by gift, bequest, or inheritance, should be taken as the basis for computing depreciation.

Depreciation is allowable on the basis of the estimated useful life of the property. Land is not subject to depreciation.

75

BLANK PAGE

Plaintiff's Exhibit 20 (Continued)

BALANCE SHEET—December 31st, 1917

Debits

Machinery	$ 4,800.00	
Accounts Receivable	30,640.00	
Inventory	25,260.37	
Other Assets	2,200.00	
		$62,900.37

Credits

Accounts Payable	$ 1,300.00	
Notes "	87,000.00	
Capital Stock	10,000.00	
		$98,300.00

STENTOR ELECTRIC MFG. CO. INC.

Plaintiff's Exhibit 20 (Cont'd).

CORPORATION INCOME TAX RETURN

ADOPTED

BLANK PAGE

25

SCHEDULE A—CAPITAL, SURPLUS, AND UNDIVIDED PROFITS AS SHOWN BY BOOKS OF ACCOUNT

34. Bank actually commencing business on the corresponding business day of the year [illegible] [illegible] [illegible]

BLANK PAGE

1. Valuation of gold with mint marks, such bonds, franchises, or other intangible property purchased with stock (Articles 37 and 38)				
2. Valuation of patents and copyrights paid in for stock (Article 39)				
3. Valuation of tangible property paid in for stock (Article 39)				
4. Stock returned to corporation as a gift, etc. (Article 40)				
5. Valuation of assets acquired in reorganization (Article 40)				
6. Appreciation (Article 40)				
7. Depreciation and depletion (Article 40)				
8. Shares of stock and other transferable assets other than dividends (Article 40)				
9.				
10.				
11. Total, Appendix				

SCHEDULE B.—STATEMENT OF INVESTED CAPITAL UPON WHICH TAXABLE YEAR.

Specify (by using red ink for distributions, or otherwise) whether each item represents an addition or a distribution.

Report dividends paid out of profits of prior years here and dividends paid out of profits of the taxable year.

In Column 4 enter the number of whole months remaining in the year, plus a fraction consisting of the number of days remaining in the month (including the date of change) divided by the total number of days in the month.

Assets (other than cash) paid in for stock must be valued in accordance with Article 38 (3) of the Treasury Decision.

Name of stockholder and description	Date	Amount	Months and fractions of months	Additional amount (Column 3 x Column 4)
0				
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9. Net amount as previously				

SCHEDULE B.—STATEMENT OF INVESTED CAPITAL UPON VARIOUS YEARS.

See instructions under Schedule B. Compute and address or subtract separately for each year.

Name of stockholder and description	Date	Amount	Months and fractions of months	Additional amount (Column 3 x Column 4)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				

SCHEDULE C.—GIFT TAXABLE UPON VARIOUS YEARS.

1. Total amount paid or applied on account for value. (Do not include figures for less than a whole dollar.)			
2. The amount of Federal income tax paid during year			
3. Taxes, for each year			
4. Less amount of dividends received in year			
5. Net taxes for year 1918			
6. Taxes taxed, for various years			

BLANK PAGE

729

731 **QUESTIONS.**

1. Explain the nature of the corporation's business if not adequately described on this page:
   (a) Main business _____
   (b) Collateral businesses, if any _____

2. Date of incorporation 1913 3. Under the laws of what State or country? Kansas

4. Enter on the following lines the names and addresses of three representative concerns in your locality engaged in the same kind of business
   Wagner Electric Co
   Thompson Electric Co
   Electrical Industries Mfg Co

5. What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax (if any)? Specify the year _____

6. If any patents are included among your assets, attach a schedule to this return showing for each patent its serial number, date of issue, name of patentee, amount of cash or stock paid therefor, and the present book value.

7. If the corporation ever took over a going business or otherwise acquired a mixed aggregate of tangible property, patents, and copyrights, and good will and other similar intangible property, and paid for such property in whole or in part with stock or other securities, submit a statement showing—
   (a) The name of the concern (also over (or from which the property was acquired).
   (b) The nature of the assets and liabilities so acquired.
   (c) The total par value of the stock issued therefor.
   (d) The value at which each class of assets was carried on the books of the concern from which acquired. (If practicable submit a balance sheet of the predecessor corporation as at the date of acquisition.)
   (e) The value at which each item was entered on the books of the corporation making this return. The different classes of property must be valued as prescribed by Article 69 of the Income Profits Tax Regulations and the values so obtained must be used in making adjustments 1, 2, and 3, Schedule C.

   If patents or copyrights were acquired, state the basis on which their value was determined, and how they were paid for.

   If good will or other intangible assets were acquired, state the basis on which their value was determined, and how they were paid for.

8. Is the corporation affiliated with one or more other corporations within the meaning of Article 77 of the Income Profits Tax Regulations? _____ If so, furnish a statement showing all the interrelated relationships.

9. Is this return a consolidated return within the meaning of Article 76 of the Income Profits Tax Regulations? No If so, submit a schedule showing in detail the computation of the consolidated invested capital and income.

10. If the corporation was not in existence during the whole of any one of the calendar years 1911–1917, is the business substantially a continuation of a business carried on during any one or more of those years? _____ If so, give name under which, and address at which, the business was then carried on. _____

11. Submit a copy, in detail, of—
   (a) The balance sheet of the corporation at the beginning of the taxable year.
   (b) The balance sheet of the corporation as the close of the taxable year.

We, the undersigned, president and treasurer of the above-named company, being severally duly sworn, each for himself deposes and says that the foregoing return, including the accompanying schedules and statements (if any), has been examined by him and is to the best of his knowledge and belief a true and complete return made in good faith pursuant to the Income Profits Tax Regulations.

Sworn to and subscribed before me this 28th day of January, 1919

[illegible]

Notary Public

My commission expires May, 1919

BLANK PAGE

Plaintiff's Exhibit 20 (Continued).

Plaintiff's Exhibit 25.

August 5, 1921

Commissioner of Internal Revenue,
Washington, D. C.

Re: IT:R:C1
ED–15

Dear Sir:—

I have received your inquiry dated July 20th, concerning claim for refund for $2362.78 on account of income and excess profits taxes paid for the year ending December 31st, 1917.

Owing to the small amount of capital ($10,000), it was necessary for the Company to borrow money in order to carry on its manufacturing operations. This was obtained from the firm of Pyne, Kendall & Hollister, who from time to time advanced money to pay bills for materials, labor, etc.

The amount of money borrowed averaged $71,160.00 for the year, interest on which was paid at the rate of 6%, amounting to $4,269.60 of which only $2,734.80 was allowed as a deduction in making up the income tax return, as follows:

One-half interest bearing indebtedness $71,160.00	$35,580.00
Plus Capital Stock outstanding	10,000.00
Interest at 6% on this amount	$45,580.00 .06
	$ 2,734.80

In making the original excess profits tax return on Form 1103, no adjustment was made in the amount of invested capital on account of the non-allowance, of the full amount

of interest paid, and in making the corrected return this adjustment was computed as follows:

Average Indebtedness	$71,160.00
Total interest paid	4,269.60
Amount of interest charges deducted on income tax return	2,734.80
Amount of interest not allowed as a deduction	1,534.80
Proportion of indebtedness to be adjusted as an addition to capital	25,580.00

You will appreciate the impracticability of furnishing all the details asked for in your letter, as the amount on which we were paying interest varied from day to day as payments were made, nor have we submitted an amended balance sheet as the corrected return does not in any way change the one furnished with the original return.

If you will have future communications for the Stentor Electric Manufacturing Company, Inc. sent in my care to the above address, it will insure prompt attention being paid to them.

Very truly yours,

BUELL HOLLISTER.

Defendant's Exhibit 25—Plaintiff's Exhibit 108.

STATEMENT

(Defendant's Exhibit 25, annexed hereto, was introduced by the defendant upon the direct examination of its witness P. M. Farmer, over objection by and exception to the plaintiff, as appears in the Appellee's Appendix at pp. 128-30.

Upon the cross examination of the said witness Farmer, plaintiff elicited and put in evidence Plaintiff's Exhibits 106 and 107, printed in the Appellee's Appendix at pp. 242-4. The "report" by one E. Berg referred to in Plaintiff's Exhibit 106, and the "brief outline" referred to in Plaintiff's Exhibit 107, were the writing which is now the said Defendant's Exhibit 25, and, upon the introduction by the plaintiff as aforesaid of its said Exhibits 106 and 107, the copy of the said Defendant's Exhibit 25 accompanying the same was marked, upon the plaintiff's offer, as Plaintiff's Exhibit 108.

Defendant's Exhibit 25 and Plaintiff's Exhibit 108 are identical, and the latter was introduced in the circumstances set forth above.)

BRIEF OUTLINE OF THE COMMERCIAL VALUE OF STENTOR PRODUCTS

Stentor Principle

Supplementing verbal report of our Chief Engineer, Mr. P. M. Farmer, the following comments of Prof. V. Karapetoff of Cornell University are of interest:

> "The rubber ring or gasket in the Stentor transmitter is not its most objectionable feature, but I consider the whole design to be such that difficulties may be expected with production in large quantities. The felt

containers cannot be made very accurately, and they do not retain their shape after assembly. There is also no provision for putting a definite quantity of carbon granules in each compartment; the same quantity by weight or by volume placed in two adjacent cells may produce entirely different results. In cases in which burnouts have occurred, there was a strong suspicion that the current was flowing almost exclusively through one compartment.

"The rubber ring will dry up in a few months in a warm and dry place, and then the conditions of the diaphragm will be quite different. This, however, may be a purely theoretical fear not realized in practice.

"With the loose and open construction used in the Stentor transmitter satisfactory results can be obtained by careful adjustment in skilled hands, but I have serious doubts as to whether or not this adjustment would remain for a considerable length of time. Moreover, such a careful assembly by skilled workers and individual testing and adjustment of each receiver would make the production quite expensive. A self-contained capsule such as is used in the ordinary Bell transmitter is a much more reliable and simple manufacturing proposition even though the volume of speech has to be somewhat sacrificed.

"Frankly, I do not see how the present Stentor construction can be much improved by minor changes, in so far as its reliability in production and operation are concerned."

Prof. Karapetoff's opinion was further corroborated by Mr. Leach, head of the Electrical Industries Company, which formerly manufactured for Mr. Spence most of the Stentor products, including Stentor transmitters and receivers.

Defendant's Exhibit 25—Plaintiff's Exhibit 108.

Mr. Leach states that in his opinion it would never be possible for us to use the Stentor principle in manufacturing telephone equipment which will hold its adjustment for any length of time or which would be of any credit to this company.

He further states that the Stentor patent or principle is, in his opinion, not alone of no value to us but that it also makes necessary a most unsatisfactory and unreliable construction.

STENTOR MARINE TELEPHONES

Despite the fact that Mr. Spence repeatedly assured us, at the time of talking over the Stentor business, that the marine type telephones were of a design satisfactory to the U. S. Navy Department, we received on August 22nd, 1918, a letter from the Bureau of Steam Engineering demanding that several changes be made in the entire equipment to meet their specifications.

It was said in this letter, also, that unless these changes were made, our equipment could not, under any circumstances, be approved.

It has taken a great deal of time and a great deal of work to make the Stentor equipment conform to the Navy's requirements. The equipment which we finally have succeeded in having approved by the Navy Department is considerably different from the original Stentor equipment, as the report of our Chief Engineer will demonstrate.

At the time that we took over the Stentor business it was our understanding that we would have no serious competitors in the marine field. It has, however, developed that not alone has large Navy Department contracts been let to competitive concern—The Call-o-phone Company, but that the commercial marine field had been neglected by the Stentor Electric Company to such an extent that we have found it very difficult to enter it successfully.

Defendant's Exhibit 25—Plaintiff's Exhibit 108.

STENTOR AVIATION TELEPHONES

After a great deal of negotiation with the Navy Department in reference to the adoption of the Stentor Throat Transmitter Aviation Telephone, we finally ascertained that the Stentor design of helmet could not, under any circumstances, be adopted by the Navy, and also that the so-called "Stentor Throat Transmitter" was not, in any way, developed to such a point that it could be used for the Government Aeroplane service.

On account of this insufficiently developed material we were forced to abandon negotiations for the sale of aviation equipment.

STENTOR OFFICE INTERCOMMUNICATING TELEPHONES

It has, from the beginning, been Mr. Spence's contention that his office intercommunicating telephone was fully developed for commercial exploitation and that present installations were working satisfactorily.

After a great deal of delay we finally succeeded in having one of these telephone systems installed here at our office. Not alone does this telephone work unsatisfactorily and go out of commission periodically or rather repeatedly, but it is also so inferior in design to competitive apparatus that it would be folly to attempt marketing it without re-designing entirely the present equipment.

As the equipment was turned over to us it was, and is, of no commercial value whatsoever.

After going over the Stentor correspondence files, I fail to find a record of any satisfactory installations of this particular character.

STENTOR PAGING SYSTEMS

While we are acquainted with at least two installations of the above character, viz; the Women's Hospital, New York and the Northern Ohio Traction & Light Company

of Akron, Ohio, that are giving somewhat fair satisfaction, the entire design of this apparatus is such that we could not market it without considerable re-designing and improvement.

The Stentor correspondence files seem to indicate that the Stentor Electric Company have not been very successful in merchandizing this equipment.

STENTOR WINDOW DEMONSTRATOR TELEPHONE EQUIPMENT

While no stress was laid on this equipment by Mr. Spence at the time we took over the Stentor business, it is, nevertheless, a Stentor product which has been put on the market and which we are supposed to exploit commercially.

A survey of this situation discloses that this equipment has proven almost universally unsatisfactory and that the Stentor Electric Company were obliged or requested to take back or replace practically every apparatus which they sold. It appears that approximately forty (40) of these sets were sold to the American Tobacco Company of New York.

In response to a form letter from the Stentor Electric Company, twenty-eight of the American Tobacco Company employees replied commenting on the performance of the equipment. Of these twenty-eight employees, eight (8) reported that they were giving somewhat satisfactory results, while twenty (20) reported unsatisfactory performance.

On account of the character of this equipment its marketing and merchandizing has neither been undertaken or considered by the Klaxon Company up to the present time.

STENTOR RAILWAY TELEPHONES

This equipment was one which we had expected to exploit most successfully and profitably. However, after having invested considerable money in entering this field, we have been obliged to discontinue, for the time being, all

sales work and will not be in a position to re-enter this field until the equipment has been considerably improved and re-designed so as to meet the requirements of the railways.

The fact is that while the field is there the Stentor equipment is entirely inadequate.

The facts which we have ascertained regarding this situation are contrary to the ones which Mr. Spence supplied us with. Mr. Spence, as well as our Sales Engineer, Mr. R. L. Wilkinson, attended the 1918 Chicago Convention of the Railway Telegraph Superintendents' Association. From Mr. Spence's report the following is quoted:

> "In spite of the fact that we have been entirely out of touch with the railroad work for almost two years, we found only boosters for Stentor equipment . . . . and all of those with whom I discussed the prospects for future business were in a receptive mood. . . . This work can be taken up at once with the Stentor material now on hand."

From Mr. Wilkinson's report, the following is quoted:

> "I must admit that I was able to get very little information on the respective merits of Stentor installations made in the past. . . . The only man who really had much to say on our product was Mr. Caskey of the Lehigh Valley. He told Mr. Spence that the Stentors installed had given so much trouble from adjustments that they had discontinued the use of all but one dispatcher's set."

Following this convention, Mr. Wilkinson made a survey of the entire railroad situation in the East and middle West covering the territory and visiting the railway superintendents of telegraphs and telephones. From the resume' which

Defendant's Exhibit 25—Plaintiff's Exhibit 108.

Mr. Wilkinson compiled on the general railway telephone situation, the following is quoted:

> "The experience of the few railroads I have seen who have used the Stentor phones in the past has made the officials skeptical of this apparatus, and it would be useless and poor business on our part to try and sell them this apparatus until the defects in the instrument have been rectified.
>
> "As a matter of fact I have only called on one road. the New York, New Haven and Hartford Railroad, who still continue to use the Stentor Telephones. All of the others have taken them out and replaced them with Western Electric Telephones after strenuous efforts to keep them in working condition.
>
> "The fact that the Stentor has been used by several roads is not going to help us much, and I opine that roads that have never had any experience with them will be easier to sell on our new and improved equipment."

As stated above the character and quality of the Stentor design has been such that we have been obliged to discontinue all our sales efforts in this direction and to let the entire matter rest until an improved design can be put on the market.

STENTOR MINE TELEPHONES

In a conference with Mr. McConnell on November 1st, 1918, Mr. Spence stated that Stentor Navy Standard Telephones of his design were suitable for mine telephone work without any alterations whatsoever.

Acting on this information, we requested Mr. Spence to arrange for a trial installation at some mine—this trial installation to constitute our first step in entering the mine field.

Defendant's Exhibit 25—Plaintiff's Exhibit 108.

Mr. Spence went to Pittsburgh on this matter and reported that all arrangements had been made with the General Manager of the Pittsburgh Coal Company for the installation of the type of telephone which Mr. Spence stated would be satisfactory for mine use, viz; the Navy type.

An investigation into the performance of this trial installation discloses the fact that radical changes must be made in the design if it is going to be of any commercial value. The present design is entirely unsuitable for mine requirements.

The investigation also discloses the fact that Mr. Spence had neither visited the mine or gotten any first hand idea as to the telephone requirements of soft coal mines. As a matter of fact Mr. Spence merely talked the matter over with the Pittsburgh Coal Company official at this official's office and made no personal investigation at the mines before recommending which equipment should be used, and stating that the Navy type would be satisfactory.

Our work in this field cannot proceed until a new design has been developed.

Defendant's Exhibit 56.

Diagram from Brown Patent.

(PHOTOSTAT.)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copy) is Bound in on the Opposite Page.]

Defendant's Exhibit 56.

743

S. O. BROWN.

TELEPHONE TRANSMITTER.

APPLICATION FILED JAN. 8, 1913.

1,096,677.

Patented May 12, 1914.

Fig. 1.

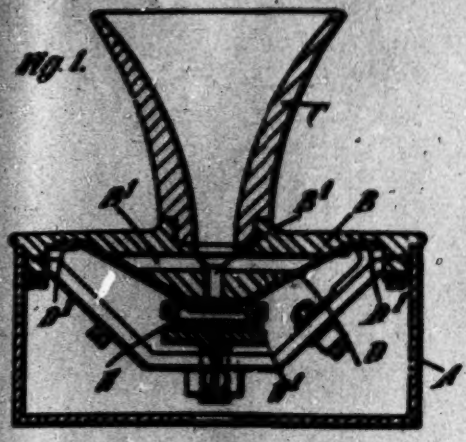


Fig. 2.

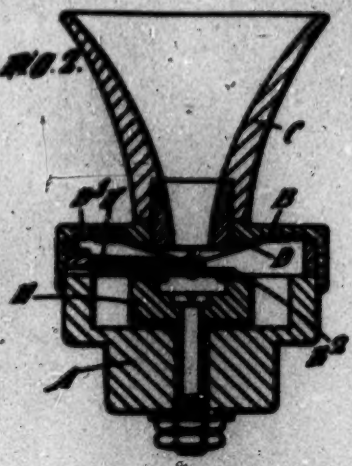


Fig. 3.



Fig. 4.

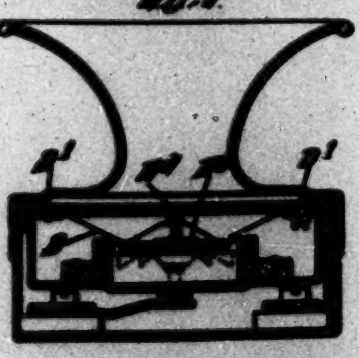


Fig. 9.



Fig. 7.



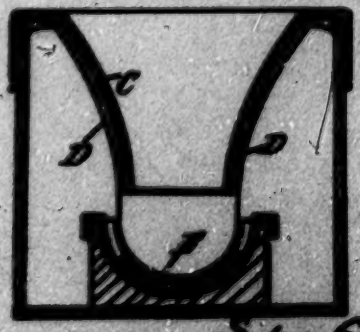
Fig. 5.



Fig. 6.



Fig. 8.



Witnesses

Inventor

Sidney G. Brown

BLANK PAGE

BLANK PAGE

APPENDIX TO PLAINTIFF'S REBUTTAL BRIEF

BLANK PAGE

APPENDIX TO PLAINTIFF'S REBUTTAL BRIEF

Buell Hollister—for Plaintiff—Redirect

. . . . . .

—417—

RDQ. You were asked on your cross-examination some questions with respect to payment of salaries by Stentor, and I am not sure that the record was clear. Was Mr. Spence paid a salary by Stentor? A. Yes, Mr. Spence was.

RDQ. When did the payment of salary by Stentor to Mr. Spence commence? A. In 1913.

RDQ. And how long did it continue? A. Until May 20, 1918.

. . . . . .

Buell Hollister—for Plaintiff—Cross

. . . . . .

—329—

XQ. If I understand you right you are claiming that the Klaxon Company did not make as much profit out of the Spence or Stentor patents as it should have made?

Mr. Bernays: I object to that question on the ground that it is a request from the witness for a definition of the legal issue which is the precise matter on trial in this cause.

The Court: Will you repeat the question, please.

(Last question repeated as recorded.)

—330—

The Court: Objection overruled.

Mr. Bernays: Exception, sir.

The Court: Let an exception be entered.

Buell Hollister—for Plaintiff—Cross

Q. Am I right? A. Some years they made a profit and some years they did not.

Mr. Morris: Will you repeat the question, Mr. Smart.

(Question repeated as recorded.)

A. We did not set the prices and I don't see how I can say that they did not make as much profit. Of course, they did not make as much profit because they did not do the business they were supposed to do.

Mr. Morris: Will you repeat the question again, Mr. Smart.

Mr. Bernays: I submit, sir, that that answer was responsive to the question.

The Court: The very last part appeared to be. Repeat that last part of the answer.

(Last part of the answer repeated as recorded.)

Mr. Morris: I think the answer is not direct but it is argumentatively responsive, and I should

like to have a direct answer to my question.

The Court: Repeat the question and, if it can be answered "Yes" or "No," answer it "Yes" or "No," and then expand on it afterwards.

(The question was repeated as recorded.)

A. They did not.

BLANK PAGE

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 7398. October Term, 1939.

STENTOR ELECTRIC MANUFACTURING COMPANY, INC.,
Plaintiff-Appellee,

v.

KLAXON COMPANY,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE.

OPINION.

(Filed October 24, 1940.)

Before MARIS, JONES and GOODRICH, *Circuit Judges.*

GOODRICH, *Circuit Judge.*

This is defendant's appeal from Judgment in favor of the plaintiff for $160,821.92, damages entered in the United States Court for the District of Delaware. The jury returned a verdict for $100,000 and the trial judge thereafter granted the plaintiff's motion to add interest of $60,821.92 to the judgment. The action was brought for breach of a contract under seal entered into on May 20, 1918 in New York. By the contract the plaintiff (Stentor) transferred to the defendant (Klaxon) all of its assets and its entire business as a going concern. Included in the transfer were certain patents then owned by the plaintiff, questions concerning which are the core of this litigation.

At the outset defendant raises the point that this plaintiff has no capacity to sue. The point was raised below by a plea in abatement to which a demurrer was sustained. Stentor Electric Mfg. Co. v. Klaxon Co., 23 Fed. Supp. 351 (D. C. Del. 1938). The defendant's contention arises out of the fact that on May 26, 1919, subsequent to the making of the contract already referred to, the plaintiff, a New York corporation, filed a certificate of voluntary dissolution. The defendant contends that such voluntary dissolution marks the death of the plaintiff as a corporate body, that rigor mortis has long since set in and that there is, therefore, no plaintiff to conduct the action. The New York statute, however, must be examined before this question can be answered. At the time the voluntary petition of dissolution was filed the New York statute provided with respect to such dissolution of a New York corporation, [Laws of 1901, Ch. 28, § 221 (3)]:

> "Said corporation shall nevertheless continue in existence for the purpose of paying, satisfying and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts or obligations, until its business and affairs are fully adjusted and wound up."

The defendant contends that this provision limits the right to sue to claims which have ripened into causes of action at the time of the dissolution. None of the New York decisions cited by either side construes the statute on this point and we have been unable to find any. But in the absence of authoritative decisions limiting them, the words of the statute seem clear. Existence is continued for "suing and being sued for the purpose of enforcing such debts or obligations." That an existing contract is an obligation seems too certain a proposition to require extensive argument or marshaling of authorities to prove it. A contract

is a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty. Restatement, Contracts § 1. That the defendant, by its contract, came under obligation to the plaintiff is plain. If it did not perform the plaintiff could sue for the breach of the obligation under the clear words of the statute, even though it had voluntarily dissolved. Compare City of Philadelphia v. Lieberman, 112 F. (2d) 424, 428 (C. C. A. 3, 1940). Under the New York statute the figure of speech analogy is not death of the corporation, but its retirement from active business.

The defendant also says that after the plaintiff corporation was dissolved, there being no plaintiff, there could be no diversity of citizenship. This is the same point as that above stated in a somewhat different way. If the corporation, under the New York law, was sufficiently alive to sue, as we hold it was, the requisite diversity of citizenship existed. The parties were proper and there was a controversy.

We pass, therefore, to the substance of the case. The contract of May 20, 1918 concerns a transfer of the plaintiff's tangible assets and good will and the assignment of existing contracts to the defendant. Included in the transaction were certain patents then owned by the plaintiff. Two of these patents, which had been issued to Jesse L. Spence, Vice-President of the plaintiff, on September 29, 1914, are the important ones in this controversy. The clause transferring them reads as follows:

> "ARTICLE SECOND: The Stentor Company further agrees to grant and hereby does grant, license and transfer to the Klaxon Company for the term of this agreement, but subject to its conditions, the sole and exclusive right to make, have made, use and sell telephone and related apparatus and devices and articles made in accordance with the United States Letters Patent, and applications for patents described on Schedule "A" hereto annexed, or any subsequent im-

provements thereon which may be made, acquired, owned or controlled by the said Stentor Company upon the inventions or any of them, described in said Letters Patent or applications.

"The Stentor Company further agrees that it will grant a similar license to manufacture the said inventions, improvements and devices under any patent which has been or which may be issued to it by any foreign state or country."

These patents were for a telephone transmitter and receiver.[1] On its part the defendant paid approximately $130,000 to the plaintiff and agreed to pay the plaintiff 50% of the net profits realized from the sale of the articles manufactured and sold under the patents, unless the profits were less than 30% of the cost of manufacture, in which case an alternative division of the profits was to be made. The contract was to run until September 29, 1931, the date of the expiration of the Spence patents.

---

[1] The specification of Patent No. 1,112,167 covering the transmitter describes the invention as follows:

"The proper position of the diaphragm is preserved by two delicate annular air cushions 17 and 18, preferably of thin rubber, which make light contact with the edge of the diaphragm and act merely to support the same when not in use. I have found that cushions so used serve as an aperiodic mounting, permitting the rigid diaphragm to move without flexure in accordance with the form of the impressed acoustic wave.

"In certain forms of apparatus hitherto used, air cushions have been employed to clamp a diaphragm firmly in place, for damping purposes. Such a structure has no relation to the present invention, wherein a substantially rigid diaphragm is so mounted as to acquire a movement of translation as a whole."

Following is a description from the specification of Patent No. 1,112,392 covering the receiver of the invention which it discloses:

"It will be seen that my improved receiver comprises a diaphragm, mounting-cushions and magnet so constructed and proportioned, as to magnet strength, diaphragm thickness and delicacy of air cushion mounting, that the diaphragm has a practically aperiodic action under the expected conditions of use.

"I have found that, where a relatively rigid diaphragm is lightly enough confined against a pneumatic cushion at its edge, this cushion exerts an aperiodic resilience, which leaves the diaphragm free to conform its movements as a whole to the particular vibrations which correspond to the magnetic changes in the telephone receiver. Such a cushion acts merely to hold up the diaphragm when current is cut off, and to preserve its proper angular position with respect to the magnet at all times."

The defendant makes the argument that the contract was one for royalties based on profits only and that it was not within the contemplation of the parties that damages should be recovered from the defendant for failure to manufacture and sell articles made under the patents. But the express words of the contract do not permit such an interpretation of the bargain between the parties. In Article Thirteenth of the contract the defendant agreed that it "will use its best efforts to further the manufacture and sale of the articles covered by this agreement, and to that end it will maintain an efficient organization for the manufacture and sale of said articles". These are certainly broad words of unequivocal promise and we find nothing in other paragraphs of the agreement to modify them.

The case presents a number of problems in the conflict of laws which will be noted and dealt with at the appropriate places. The first relates to the law governing the obligation of a contract. The agreement was negotiated, executed and delivered by the parties in New York. The contract is, therefore, governed by the law of that State. While the question of the law determining the validity and scope of the obligation of a contract is the subject of considerable confusion in the authorities there is nothing in this case to create difficulty on that point. Reference to the place of contracting is the rule expressed in the Restatement of Conflict of Laws, § 332. This case presents none of the factors which, when present, lead courts to depart from that general rule. There is nothing here to show intention of the parties that any other rule should govern. New York is the place where plaintiff company was located and did its business. New York is the place where the agreement was both negotiated and consummated. New York law governs the obligation of the contract.

This brings us to the consideration of the defendant's next argument. He contends that the articles covered by the patents had no commercial utility, that the District Court erred in holding that the contract was a license rather than an assignment and instructing the jury that the de-

fendant could not question the validity of the patents. These points involve, in our judgment, the same general proposition and will be treated together, for both go to the proposition whether the defendant was in default in failing to use its best efforts in the manufacture and sale of the articles covered by the agreement.

The court below instructed the jury that it was necessary that it should find that the patents possessed commercial value and utility sufficient to justify the manufacture and sale of devices thereunder in order that the plaintiff should recover. By its verdict the jury resolved this question in favor of the plaintiff. There was evidence upon which the jury could base that finding. It was not disputed that all the receivers and transmitters sold by the defendant were stamped with the words "patented" and "Stentor" and that the plaintiff paid royalties to the defendant on the sale of these devices. There was introduced in evidence advertising matter distributed by the defendant showing that the articles were manufactured under the Spence patents and that the equipment was of "surpassing merit, combining utility, comfort and safety." There was a letter to Mr. Spence from one of the defendant's officers praising the equipment. There was an exchange of communications between officers of the defendant in which it was suggested that since only a small part of the construction of the devices then being manufactured came under the Spence patents, the possibility of changing the construction to avoid the patents entirely should be considered. There was oral testimony introduced as to the value of the receiver patent in radio apparatus. The defendant points to evidence tending to prove that its devices were not manufactured in accordance with the Spence patents and that the teachings of these patents were commercially useless. No good end would be served by reviewing all of the testimony. It is sufficient to say that the fact problems here were for the consideration of the jury and there was ample evidence to support its finding.

Both parties have argued at length the question whether the contract between them was a license to manufacture under the patents or an assignment of the patent rights. It is true that under the law of New York a vendee of a patent may defend a suit for the price on the ground that invalidity of a patent constitutes failure of consideration, whereas a licensee may not question its validity. Marston v. Swett, 66 N. Y. 206, 212 (1876); Herzog v. Heyman, 151 N. Y. 587 (1897). The defendant's argument that it is an assignee rather than a licensee is evidently the meeting of the condition precedent to allowing it to show that the consideration for the agreement failed.

It is not necessary for the determination of this case to decide whether the defendant was an assignee or a licensee. There was no failure of consideration. The defendant got exactly the monopoly for which it bargained. It carried on its business under these patents throughout the term and accepted such benefits thereunder as it thought desirable to reap. Although at times the defendant questioned whether some of the articles it manufactured came within the scope of the patents it never raised the question of their validity. Having accepted all the benefits which the contract provided should accrue to it the defendant may not now excuse its failure to perform by alleging it did not receive what it bargained for. The terms of the contract gave the sole right to manufacture the articles under the patent to the defendant. It enjoyed the monopoly it bargained for and there was no failure of consideration.

There appears to be no New York case directly in point. Marston v. Swett, supra, specifically left the question open, but the decision of the United States Supreme Court in Kinsman v. Parkhurst, 18 How. 289 (U. S., 1855) bears directly on the problem. In that case the owner of a patent assigned a one-third interest therein, the assignor and assignee agreeing to carry on the business of manufacturing and selling the patented machine. Thereafter the parties agreed that the assignee should continue the manufacture of the machines only until he had reimbursed himself for

various expenditures, after which time the manufacture was to be carried on solely by the assignor who was to pay the assignee one third of the net profits. Alleging that the assignee, in violation of this agreement, had continued to manufacture after reimbursement, the assignor brought suit for an accounting.

The defense that the patent was invalid was held to be unavailable. The court stated: (p. 293) "Having actually received profits from sales of the patented machine, which profits the defendants do not show have been or are in any way liable to be affected by the invalidity of the patent, its validity is immaterial. Moreover, we think the defendants are estopped from alleging that invalidity. They have made and sold these machines under the complainant's title, and for his account; and they can no more be allowed to deny that title and retain the profits to their own use, than an agent, who has collected a debt for his principal, can insist on keeping the money, upon an allegation that the debt was not justly due."

To the same effect see Milligan v. Lalance & Grosjean Manuf'g Co., 21 Fed. 570 (C. C., S. D., N. Y. 1884); 2 Walker on Patents (Deller's Ed. 1937) § 350.

DAMAGES.

Defendant complains of the admission of evidence on the question of damages; and maintains furthermore, that the damages were entirely too speculative and that the verdict should have been limited to a nominal sum. It has been pointed out that damages were sought for the failure of defendant to "use its best efforts to further the manufacture and sale of the articles covered by" the contract between the parties. It is always difficult in such a case to translate the wrong into terms of mathematical exactness. Two basic principles must be balanced against each other. The reconciliation must be made between the principle that the plaintiff is entitled to compensation even though there is some uncertainty with respect to the amount, and the

principle that the jury must be furnished with reasonable guides by which to reach a verdict and will not be allowed to make an uncontrolled guess.[2] On the general point it is said in the Restatement, Contracts § 331, Comment *a*:

> "The requirement of reasonable certainty does not mean that the plaintiff can recover nothing unless he establishes the total amount of his harm; nor does it mean that he cannot get damages unless he proves the exact amount of his harm. The requirement merely excludes those elements of harm that cannot be evaluated with a reasonable degree of certainty. . . . Furthermore, there are cases in which the experience of mankind is convincing that a substantial pecuniary loss has occurred, while at the same time it is of such a character that the amount in money is incapable of proof. In these cases the defendant usually has reason to foresee this difficulty of proof and should not be allowed to profit by it. In such cases, it is reasonable to require a lesser degree of certainty as to the amount of loss, leaving a greater degree of discretion to the jury, subject to the usual supervisory power of the court."

Again in the Restatement, Torts § 912, Comment *d*, on the subject of an injury to a business, it is stated:

> "Although in such cases, the burden is on the injured person to prove with a fair degree of certainty that the business or transaction was or would have been profitable, it is not fatal to the recovery of substantial damages that he is unable to prove with definiteness the amount of the profits he would have made or the amount of harm which the defendant has caused. It is only essential that he present such evidence as might reasonably be expected to be available under the circumstances (see Illustrations 11 and 12)."

---

[2] Williston on Contracts (Rev. Ed. 1937) § 1345; McCormick on Damages (1935) §§ 26, 27.

The defendant's objections to the proof of damages may now be considered in the light of these general principles.

The defendant objects to the admission of certain testimony on the part of the president of the plaintiff company, Mr. Hollister. Mr. Hollister made an estimate of additional profit which his company should have received had the defendant performed its part of the contract. Some of this evidence was pretty highly speculative. Nevertheless, the defendant is not in a position to complain of it for it was at the defendant's insistence that the question was opened. This being so, defendant cannot now object. McBoyle v. United States, 43 F. (2d) 273, 275 (C. C. A. 10, 1930); Warren Live Stock Co. v. Farr, 142 Fed. 116, 117 (C. C. A. 8, 1905); Wigmore on Evidence (2d Ed. 1940) § 15.

Moreover, there is sufficient competent evidence in the record to justify the verdict. There was evidence that Stentor had made a net profit in 1917 of approximately $13,000, and that Klaxon had earned approximately $60,000 from May 20, 1918 to the end of that year, of which Stentor received half. During the fourteen year term of the agreement Stentor received from Klaxon about $70,000. The jury could properly compute damages by reference to the profits previously made by a going business.[3] The use of the profits for either year as a basis would result in a greater sum than $100,000. Defendant argues that those profits cannot be used as a criterion because they resulted from contracts with the Navy which business terminated with the close of the World War. But there was evidence that there was other private business available which Stentor could not handle because of its insufficient capitalization and that one motive for the agreement was that Klaxon could expand the operations so as to take advantage of such potential business.

There was evidence of damage suffered as a result of defendant's policy of selling to its affiliated companies at a

[3] Eastern Terminal Lumber Co. v. Stitzinger, 35 F. (2d) 333 (C. C. A. 3, 1929); Hedrick v. Perry, 102 F. (2d) 802 (C. C. A. 10, 1939). Williston on Contracts (Rev. Ed. 1937) § 1346A.

very small margin of profit. Thus one letter dated July 27, 1926 reads in part as follows:

> "Under the circumstances, I believe that inasmuch as we are actually showing a fairly good profit on this business and enough to pay the Stentor Company something on their contract that it would be advisable for us to reduce the price of the equipment to Fisher Body enough to bring the profit down to a point where it would not be necessary to pay any to this outside concern.
>
> "Mr. Cooper has promised to investigate this matter and notify me just what reduction could be made on the Fisher Body business to bring it down to the point where we would only be making our own legitimate profit and not be obliged to pay any out to the Stentor Corporation."

Another letter dated December 19, 1929 states: "The occasion for some profit in this particular quarter was that we sold a small amount of equipment to some outside Companies. . . ." There was proof also of the total amount of business done in each year. Plaintiff's president, Hollister, was permitted to estimate the loss to Stentor during 1928, 1929 and 1930 as a result of this duplicity at $23,423.84.

It is true that there was no evidence on the record of the exact amount of the price differential or the number of units sold to affiliates at the favored price. But the evidence was clear on the fact that a wrong had been committed. And there was evidence on the record of the rate of profit on the sales to affiliates and of the rate of profit to outside concerns in earlier years. It was not unreasonable to draw the inference from the letter of December 19, 1929 that during the years in question (1928, 1929 and 1930) all sales were made to affiliates, with the exception of the quarter there mentioned, especially in view of the fact that no profits were paid to Stentor in those years. It is true that there was a

great deal of uncertainty but we cannot say that the estimate was baseless. If the facts were otherwise they were peculiarly in the knowledge of the defendant, but defendant did not go into the question. The following quotation from the Supureme Court is appropriate:[4]

> "It is true that there was uncertainty as to the extent of the damage, but there was none as to the fact of damage; and there is a clear distinction between the measure of proof necessary to establish the fact that petitioner had sustained some damage, and the measure of proof necessary to enable the jury to fix the amount. The rule which precludes the recovery of uncertain damages applies to such as are not the certain result of the wrong, not to those damages which are definitely attributable to the wrong and only uncertain in respect of their amount."
>
> "Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise. . . . As the Supreme Court of Michigan has forcefully declared, the risk of the uncertainty should be thrown upon the wrongdoer instead of upon the injured party."

---

[4] Story Parchment Co. v. Paterson Parchmont Paper Co., 282 U. S. 555, 562-563 (1931).

ADDITION OF INTEREST.

Judgment was entered upon the verdict of the jury for $100,000 on July 20, 1939. Upon motion of the plaintiff on July 26, 1939, the court added $60,821.92 to the judgment as interest computed at 6% from the date of the institution of the action to the date of the entry of the judgment. As pointed out by the court below the authority as to power to amend is found in Rules 54 (c) and 60 (a) of the Rules of Civil Procedure.[5] The basis of this addition to the verdict is found in § 480 of the Civil Practice Act of New York. It provides:

> "In every action wherein any sum of money shall be awarded by verdict, report or decision upon a cause of action for the enforcement of or based upon breach of performance of a contract, express or implied, interest shall be recovered upon the principal sum whether theretofore liquidated or unliquidated and shall be added to and be a part of the total sum awarded."

The correctness of this addition is strenuously attacked by the defendant. This question presents the most difficult point of the case. Is the New York statute applicable? No one disputes the general proposition that all matters of procedure are governed by the law of the forum; Restatement, Conflict of Laws § 585. But it is clear by what we think is undoubtedly the better view of the law that the rules for ascertaining the measure of damages are not a matter of procedure at all, but are matters of substance which should be settled by reference to the law of the appropriate state according to the type of case being tried in the

[5] Rule 54 (c):

"... every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."

Rule 60 (a):

"Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders."

forum. The measure of damages for breach of a contract is determined by the law of the place of performance; Restatement, Conflict of Laws § 413. With regard to the item of interest as damages for breach of a contract the Restatement of Conflict of Laws, § 418 says: "The rate of interest allowed as part of the damages for the breach of a contract is determined by the law of the place of performance." See also Goodrich on Conflict of Laws (2d Ed. 1938) 215 and cases cited in note 101; 2 Beale, The Conflict of Laws (1935) 1335 and cases cited in note 6.

Where was the place of performance of this contract? It has been said above that the contract was entered into in the State of New York. The plaintiff performed its part there upon the execution of its document of transfer to the defendant. There was no express provision stating where performance by the defendant was to take place. Restatement, Conflict of Laws § 355 states as follows:

> "Place of Performance.
>
> The place of performance is the state where, either by specific provision or by interpretation of the language of the promise, the promise is to be performed. Comment:
>
> *a.* The place of performance is often fixed by the contract. If the place of performance is not stated in specific words in the contract, it must be determined by construction and interpretation. A contract may be made up of several promises, each of which has its own place of performance which is different from that of the other promises."

We think the proper construction of this contract fixes New York as the place of performance. As stated, plaintiff performed its part in that State. The sale was that of a going business which was being carried on in New York, the location of the Stentor plant. The contract provided that the defendant was to carry on that business and the defendant did commence performance in New York, although later it

moved its operations to other States. There is no other State where the contacts with this transaction are such as to indicate the propriety of reference to other law in determining this question. Furthermore, "In the absence of specific language, or of circumstances indicating a contrary intention, a contract is to be performed, in most cases, at the place of contracting, as has often been laid down in the cases." 2 Beale, The Conflict of Laws (1935) 1259.

Taking the New York law as the proper rule of reference to determine the question of damages and taking it further that the matter of recovery of interest and the rate thereof is a matter of substance, there is the further difficult question whether the New York statute above referred to is a matter of substance to be included as a proper part of the reference to New York law in this case, or whether it is simply a regulation of procedure in the New York courts. This question the court at the forum must determine.[6] We do not get help from previously decided cases upon this point. In Preston Co. v. Funkhouser, 290 U. S. 163 (1933) the Supreme Court held that the retroactive application of the statute did not violate the obligation of a contract. Such a decision, obviously, does not settle the Conflict of Laws problem as to whether the statute should be interpreted

[6] Restatement, Conflict of Laws § 584:

"Determination of Whether Question is One of Procedure.

The court at the forum determines according to its own Conflict of Laws rule whether a given question is one of substance or procedure.

Comment:

a. The rule stated in this Section is an application of the general principle that a court applies the Conflict of Laws rule of its own state (see § 7). The reference to the foreign law is not to its Conflict of Laws rules for settling foreign cases in that state (with rare exceptions, see § 8), but to its internal rules with reference to transactions similar to the one in question.

b. In determining whether an element of a foreign transaction is one of substance or procedure, a court will examine the entire transaction which is before it. This includes the statute or other rule of law creating the alleged right or duty, and its interpretation thereof by the courts of that state. In determining the question, however, it is to be observed that in so far as the local rule of the forum is applied because the question is considered one of procedure (see § 585), the result of the litigation to the parties may be changed, and therefore that the reference to the foreign rules are limited only because of the paramount reasons of local convenience and policy (see Introductory Note to this Chapter)."

merely as regulating the procedure in New York courts or whether it is part of the New York law to be included in reference by a court in another State. It seems to us that the statute, in the Conflict of Laws sense, at any rate, is substantive and that reference to it is rightfully included. It gives a plaintiff against whom a breach of contract has been committed a definite right to interest as an element of his damages. It seems as substantial an item as, for example, loss of time in a personal injury case. We, therefore, conclude that the reference to the New York statute was correctly made by the trial court in adding the amount of the interest to the verdict.

Appellant maintains that the computation of interest from the date of commencement of the action, while in accord with the general New York practice where there is no proof of a fixed date of breach,[1] is not justified where the jury's verdict may include damages accruing after the date of institution of the action, but no New York decision is cited on the point. Clearly most of the damages accrued prior to the institution of the action yet plaintiff has interest only from that date. On these facts there is no injustice in computing interest from the date the action was started.

The judgment of the District Court is affirmed.

[1] Manufacturers Trust Co. v. Gray, 278 N. Y. 380, 16 N. E. (2d) 373 (1938); Aronowsky v. Goldberger-Raabin Co., Inc., 250 App. Div. 731, 293 N. Y. Supp. 527 (1937); Freedman v. Hart & Early Co., Inc., 162 Misc. 487, 293 N. Y. Supp. 525 (1935).

A true Copy:
Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

October Term, 1939

No. 7798

Electric Manufacturing Company,
Plaintiff-Appellee,
v.
Defendant-Appellant.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

Argued June 21, 1939.

Decided July 21, 1939.

Before: [illegible]